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Kind Regards,

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International sale of goods and passing of property

by
Zafar Azeem *

Where parties to sale of goods are located in different countries, their mutual relationship will be determined by the contract of sale. Such contracts become subject to interpretation by different legal systems in order to find the legal obligations between the parties. There are several international conventions and regulations in this regard and these instruments determine the rights and duties of contracting parties. United Nations Convention on Contracts for the International Sale of Goods (CISG) is a good example of such an instrument. Despite the fact that central issue in such dealings is transfer of goods, yet transfer of property is not covered by these conventions. It is, therefore, necessary that contracting parties must envisage in the sale contract clauses related to the transfer of ownership of the goods sold.

This type of situation gives rise to questions such as how does transfer - from the seller to the buyer - of property in goods occur? More important, is the problem of the law applicable to the transfer of property. In each contract of sale, the effects of the transfer of ownership of the goods sold from the seller to the buyer emerge as an important legal issue. The issue emerging is dealt with in various ways by different legal systems and in an international contract of sale parties from at least two countries are involved.

For example, in civil law system passing of property takes place either at the time explicitly agreed between the parties or, in absence of specific terms at the time the parties exchange their consents to the sale, and this happens irrespective of the fact whether the goods have been delivered or the price thereof has been paid. The fact is that transfer of goods takes place when the goods are identified; where the goods are sold on the basis of weight, number or measure, property passes when the goods have been weighed, counted or measured. Further, the property in future goods stands passed when the goods are manufactured, grown or the same come into existence and it is possible for the buyer to take the delivery. Where the sale is conditional sale, property passes upon fulfilment of the condition.

Property passes to the buyer at the intended time where a sale contract deals with specific or ascertained goods. When there is an unconditional sale contract in respect of specific or ascertained goods, property passes to the buyer at the time the contract is made, irrespective of the fact whether the time of payment or delivery or both is postponed.

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Where the goods are unascertained, property is transferred to the buyer when they are ascertained. In many cases specific rules apply, for example, where the title retention clause serves to separate the passing of property or where risk of loss is related with the receipt of payment, the title remains with the seller along with other conditions that may be imposed by the contract.

Physical delivery is a pre-condition in the default rule for transfer of ownership to takeplace.[1] An international contract of sale obviously takes place in different countries, and is governed either by a particular national law or by merchant law (lex mercatoria).[2]

CISG is now increasingly becoming applicable to world trade as more and more states accept it and make its rules part of their law.[3] CISG provides uniform rules for the international sale of goods where parties to the contract have places of business in different countries and where the rules of private international law direct the application of the municipal law of a contracting state.[4]

The seller must, among other obligations, transfer the property as required by the contract and directed by CISG.[5] However, it is not concerned with the effect which the contract may have on the property in the goods sold.[6] It appears that the transfer of ownership is a matter to be regulated by the terms of contract even where the parties decide that the contract is governed by the CISG.[7]

As per international practice, states have failed to agree as to the mode and time of transfer of ownership and these elements differ in different legal systems. The contracting parties do not agree on various consequences attached to the transfer of ownership, such as the questions of validity and effects of the reservation-of-ownership clause particularly in the case of a bankruptcy.[8]

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[1] This is also the case under Swiss law, where delivery of possession is necessary for the transfer of ownership in movable goods in addition to a cause underlying this transfer. The above legal systems recognise the transfer of possession by way of constitutum possessorium (the seller transfers ownership but retains temporary control over the thing). In addition, if the sale is a cash sale there must be payment of the price in addition to delivery of the goods for transfer of ownership to take effect, except in the case where there is a credit agreement.

[2] The merchant law is defined in various ways, though in most cases it is agreed to include, among others, rules laid down by merchants and general principles which are codified by different institutions.

[3] The CISG was adopted on 11 April 1980and entered into force on 1 January 1986.

[4] Parties are entitled to choose the CISG as the law governing their contract even if they are located in states which are not member states to the convention.

[5] See Article 30 of CISG.

[6] See Article 4 (b) of CISG

[7] The transfer of property is not dealt with by the CISG because legal systems disagree on this question.

[8] The CISG may play a vital role in the transfer of ownership since it regulates the delivery of goods in international sale.

Where the parties have agreed that their contract be governed by general principles of law, the lex mercatoria or in such cases UNIDROIT principles may apply. These principles apply since the parties have not chosen any law to govern their contract. These principles may also apply where there exists an aspect not regulated by the law governing the contract.[1] Where parties to the contract have failed to contemplate transfer of ownership in their contract, the said principles will be helpless, since they neither regulate the transfer of ownership of the goods nor contain provisions concerning delivery of the goods.

The transfer of ownership of goods is also not covered by Inco terms; rather, Inco terms deal with responsibilities of parties for delivery of goods under contracts of sale.[2]

The goods sold normally pass to the buyer on delivery, ie, when the goods are placed alongside the ship. In an FOB (free on board) contract, property as well as risk and possession pass when goods cross the ship's rail, save in a case where the seller has reserved the right of disposal (by retaining the bill of lading), when goods are unascertained or when the contract provides otherwise. In a CIF (cost, insurance and freight) contract, property and possession pass to the buyer when documents are handed over, but the risk passes retroactively as of shipment. In ex-ship or arrival contracts, property and risk pass with delivery of possession to know the moment of transfer of ownership, therefore, one must first determine the applicable law. In many cases, the moment at which property passes is a matter of intention to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case.

In a case where the transfer of ownership is not regulated under the international rules, one may resort to the terms of contract between parties, and these terms can help to solve the issue.[3]

It is not necessary that an applicable law to the contract governs the issue of transfer of goods. For Example, where parties did choose the lex mercatoria as being the governing law of their contract. The fact is that lex mercatoria does not govern the transfer of ownership. Further, the parties are at liberty to choose the domestic law of the country of their choice as governing the contract, and in one country's domestic law, transfer of ownership may necessarily govern the latter. In that case the choice of law clause must explicitly state that the law chosen will also

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[1] As per principles of international contract adopted by the International Institute for the Unification of private international law (UNIDROIT).

[2] As for the CISG, the underlying cause is that the law on transfer of property rights differs from country to country. The time and manner of transfer of ownership is also determined by the applicable national law.

[3] However some binding rules exist which cannot be derogated from by parties no matter how international their contract may be? One may rightly wonder whether the law chosen by the parties as the law governing the contract governs also the transfer of property in goods sold.

govern the transfer of ownership.[1] At times, however, the choice of applicable law may be implied.[2]

The implied choice of applicable law can be deduced from the arbitration or jurisdiction clause in the contract. The principle qui eligit judicem eligit jus justifies it and it entails that appropriate tribunal be specified along with appropriate basis for the determination of the law to be applied. Use of a standard form known to be governed by the law of a particular country also helps to deduce the implied choice of law; in addition, it can also be deduced from an express choice in previous or related transactions between the countries or from references in the contract to particular provisions of the law of a particular country. Where the parties have chosen the law governing the contract, no grounds will be available for isolating one element from the other in order to look for another governing law particularly when the parties did not manifest any intention of subjecting that element to a different law.[3] Where parties have not opted for a specified law to the contract, it shall be governed by the law of the country with which it is most closely connected.[4]

The law governing transfer of ownership should be the law of the state of the seller. Indeed, it would be unfair if the law of the country of the seller cannot govern ownership transfer while his or her performance is said to be characteristic of the contract. After the determination of legal factor, one has to see what the law about the transfer of ownership. In many cases, the lex situs may apply. Even these statements may lead to another problem that is to determine where the goods were located at the time of conclusion of the sale contract?

The manner in which and the time when passing of property takes place differs, from one country to another. Passing of property may take place, in principle, immediately and automatically at the moment the contract of sale is concluded, especially in civil law tradition countries. On the contrary, in common law tradition countries the principle is that the intention of parties prevails as to when and how passing of property is affected.

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[1] The ownership transfer will depend: on the law chosen by the parties to govern the contract. The manner of transfer and its timing will vary according to the domestic law chosen by the parties.

[2] The implied choice is considered as the absence of choice of law; the proper law is determined by reference to the subjective element, that is, the implied intention of parties.

[3] In the absence of any choice of law the court shall decide the proper law applicable to the contract based on conflict of law rules66 which vary from country to country.

[4] Under article 4 (2) of Rome Convention, it is presumed that a contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or central administration in the case of a body corporate or unincorporated. Under article 8 (1) of the Convention on the Law Applicable to Contracts for the International Sale of Goods of 1986 (but which has not yet entered into force), the contract is governed by the law of the state where the seller has his place of business at the time of conclusion of the contract. Article 8 (2) of the same convention provides some cases when the law of the state of the buyer can govern the contract. Nonetheless, this provision cannot be of great help since article 5 (c) of the convention excludes the transfer of ownership from its scope of application.

The various sets of rules, principles and conventions of international trade do not regulate the moment and the manner of passing of property, allegedly because different countries have failed to reach a consensus. Consequently, the issue of passing of property in goods sold is a matter left to contractual stipulations. The parties may expressly or by implication choose a national law that shall govern the passing of property which may differ from the law governing the rest of the contract. Where such stipulations are not made, the law applicable to the passing of property shall be determined by the court. The passing of property is a delicate issue; hence parties are advised to make a choice as to which law will govern the passing of property, as in the absence of such a choice the court may decide on a law which was not intended by parties.

Hong Kong

PwC recommends tax changes in Hong Kong's 2014/15 budget

With Hong Kong expected to achieve a budget surplus in the current fiscal year, PwC suggests that the implementation of further tax measures to ensure the city's international competitiveness, and to strengthen Hong Kong's leading position as an international financial center, should now be investigated.

PwC forecasts that Hong Kong's Government will record a HKD22.3bn (USD2.9bn) budget surplus in the 2013/14 fiscal year, against the small deficit of HKD4.9bn originally forecasted by the Government.

Total revenue from profits tax and salaries tax should be around HKD180.9bn, while revenue from stamp duties will drop from HKD42.9bn in 2012/13 to HKD36.1bn in 2013/14 following the success of the stamp duty hikes introduced by the Government to restrict property speculation. Revenue from land sales is forecast to reach HKD79.6bn, HKD10.5bn higher than the Government's original estimates, and expenditure is expected to be lower than the Government's target of HKD44.4bn, at around HKD41.5bn.

However, KK So, PwC Hong Kong Tax Partner, added that: "given the source of revenue of the Hong Kong Government is relatively confined, it should adhere to the prudent fiscal discipline of keeping expenditure within the limits of revenues and committing resources only where justified and needed."

Within those limits, Jeremy Choi, PwC Hong Kong Tax Partner, said that: "the Government should undertake a review of its tax system to ensure Hong Kong stays competitive and continue to attract more business."

"To provide a sustainable business environment, especially for Hong Kong manufacturing companies," he recommended that the Government should "relax the restriction imposed by Section 39E of the Inland Revenue Ordinance on depreciation allowance for plant and machinery used outside of Hong Kong. To help the business sector, PwC also suggests to introduce a group tax loss relief measure."

PwC proposes, as a timely relief for small and medium-sized enterprises, a reduction in profits tax from 16.5 percent to 10 percent for companies with taxable profits below HKD500,000, while it also recommends that salaries tax bands be widened from

HKD40,000 to HKD48,000 and, to alleviate the tax burden on the middle class, the mortgage interest deduction period should be extended from 15 years to 20 years, with a rise in the maximum interest deductible from HKD100,000 to HKD150,000 per annum.

With regard to Hong Kong's position as a leading international financial center, Peter Yu, PwC Southern China and Hong Kong Tax Leader, pointed out that: "Hong Kong is facing arising challenges as well as opportunities from the continuing internationalization of the renminbi; new offshore RMB businesses operating in Taiwan and Singapore; and the development of the financial industry in the free trade pilot zones in Mainland China."

He noted that "the Financial Services Development Council (FSDC) has already recognized in its earlier report that Hong Kong's leading position as an international financial center needs to be further strengthened."

PwC urges the Government to adopt the initiatives proposed by the FSDC, including its proposals for tax exemptions and anti-avoidance measures on private equity funds, and to promote Hong Kong's bond market by introducing a profits tax exemption for all short and medium bonds. – *Courtesy tax-news.com*

United States

IRS reviews its efforts to combat identity theft and refund fraud

In a review of its work in 2013, and measures it will take this year, the United States Internal Revenue Service (IRS) has professed that stopping identity theft and refund fraud is one of its top priorities.

The agency's work on identity theft and refund fraud has continued to grow, and will also be expanded for the 2014 filing season. The IRS has assigned more than 3,000 employees to work on identity theft-related issues – to prevent refund fraud, investigate identity theft-related crimes and help taxpayers who have been victimized by identity thieves – and, in addition, has provided appropriate training to more than 35,000 employees.

The IRS has seen a significant increase in refund fraud that involves identity thieves who file false claims for refunds by stealing and using someone's Social Security number. For 2014, the IRS will continue to increase both the number and efficiency of the identity theft filters that are used to identify potentially fraudulent returns due to identity theft prior to the processing of the return and release of any refund.

As a result of its efforts to combat identity theft from 2011 through November 2013, the IRS confirmed that it has stopped 14.6m suspicious returns, and protected over USD50bn in fraudulent refunds.

Direct investigative time applied to identity theft related investigations has increased 216 percent over the last two years. In Fiscal Year (FY) 2013, the IRS initiated almost 1,500 identity theft related criminal investigations, an increase of 66 percent over investigations initiated in FY 2012, while indictments and sentencing doubled in FY 2013.

In January 2013, the IRS conducted a coordinated and highly successful identity theft enforcement sweep, while the Law Enforcement Assistance Program, which provides for the disclosure of federal tax return information associated with the accounts of known and suspected victims of identity theft with the express written consent of those victims, has been expanded nationwide.

The Identity Theft Clearinghouse (ITC) has also continued to develop and refer identity theft refund fraud schemes to the IRS Criminal Investigation Field Offices for investigation. For FY 2013, the ITC received over 1,400 identity theft related leads, relating to more than 391,000 tax returns claiming in excess of USD1.3bn in potentially fraudulent federal income tax refunds.

However, while the agency said that it has made considerable progress in fighting identity theft, it acknowledged that more work remains. Fighting identity theft is seen as an ongoing battle as identity thieves continue to create new ways of stealing personal information, and the IRS is continually reviewing processes and policies to minimize the incidence of identity theft and to help those who find themselves victimized.

Among the steps underway to help victims, the IRS pointed to the expansion of Identity Protection PIN (IP PIN) numbers that are assigned annually to victims of identity theft for use when filing their federal tax return and show that a particular taxpayer is the rightful filer of the return. The IP PIN will allow these individuals to avoid delays in filing returns and receiving refunds.

Furthermore, the IRS continues to dedicate more employees to resolution of victim cases that are usually extremely complex to resolve, frequently involving multiple issues and multiple tax years. The IRS is working hard to streamline its internal process, but a typical case can take 180 days to resolve, and the IRS is working to reduce that time period. – *Courtesy tax-news.com*

Czech Republic

Czech politicians reach coalition government agreement

Politicians in the Czech Republic have agreed to form a new center-left coalition Government that will include Andrej Babis, leader of a party committed to low taxation and efficient tax collection as its Finance Minister.

Babis, who is the country's second-richest man, created the ANO (YES) party in 2011, which went on to win 18.6 percent of the vote in elections in October. The agreement, which has yet to be approved by President Miloš Zeman, will see Social Democrat leader Bohuslav Sobotka become the new Prime Minister. Some other ministerial positions will go to the Christian Democrats.

On Monday, Babis confirmed that he would use his position to push for improved tax collection, to combat fraud, and to improve the way that the Czech Republic absorbs funds from the European Union.

Unlike the Social Democrats, ANO is opposed to a rise in corporation tax. Babis argues that instead spending should be slashed through measures such as a unified procurement process for government agencies.

However, Babis is also battling an accusation that he was an informant during the Communist era, which would exclude him from holding office. In November, he told the *Financial Times* that the Secret Police had kept a file about him of which he had been unaware, and that he was now in the process of suing the Nation's Memory Institute in neighboring Slovakia over the claim. – *Courtesy tax-news.com*

Rs69bn gap in July-Dec revenue collection target

As against a revenue collection target of Rs1,100 billion set by the Federal Board of Revenue for July-December period, Rs1,031bn could be collected, reflecting a gap of Rs69bn.

Since July 2013, the collection is on the decline. The PML-N led federal government had claimed that current year's revenue collection target of Rs2,475bn would be achieved.

The IMF has already projected that annual FBR collection may fall to Rs2,380bn as against a target of Rs2,475bn, a gap of Rs95bn.

However, provisional figures, compiled by the FBR showed a rise of 16pc (Rs1,031bn)in revenue collection in July-December as against a collection of Rs888.975bn during the same period last year.

This rise is because of rising petroleum products prices and other factors.

The government had projected a growth target of 27pc per month, which has largely been missed.

This slow growth over last year shows poor performance of tax collection machinery.

To achieve the annual target, the FBR would now have to record growth of over 32pc in the remaining months, which was next to impossible.

Provisional figures show that direct tax collection reached Rs382bn in July-December 2013 as against Rs337.523bn collected during the same months last year, reflecting a growth of 17.8pc.

The sales tax collection stood at Rs481.68bn as against Rs392.155bn last year, showing a growth of 22.8pc.

The growth in sales tax collection was because of increase in the sales tax rate from 16pc to 17pc and rise in the prices of petroleum products.

As a result, the sales tax collection on domestic sales witnessed a growth of 29pc.

The FED collection stood at Rs57.23bn in July-December as against Rs51.918bn over the same months last year, reflecting a growth of 10.2pc.

A paltry growth of 2.5pc was recorded in collection of customs duties as revenue collection stood at Rs110.088bn this year in

July-Dec 2013 as against Rs107.378bn over the corresponding months of last year.

Annual revenue target for 2013-14 was fixed on the basis of Rs2007bn to be collected by the end of June 2013 but actually collection for the year ended up at Rs1939bn. Thus base eroded by Rs68bn right from the beginning of the current fiscal year. – *Courtesy Dawn.com*

FBR defrauded on tax reforms projects

A company of civil works and services has defrauded the Federal Board of Revenue (FBR) on tax reforms projects by obtaining sales tax refunds on fake claims, official sources said.

The company is being protected by some corrupt tax officials for the last two years despite FBR Headquarters clear directives for recovery, the officials said. Housing Enterprise had availed of zero–rated sales tax on services provided to the revenue body and other government departments and obtained refunds of Rs133 million by presenting its contracts as international tender.

The Regional Taxpayers Office (RTO)–II, Zone-1 detected the scam in post-refund audit in the sales tax refunds issued to the company on purchases for refurbishment of the Model Customs Collectorate, Karachi, the officials said.

On the contract, the company obtained Rs47.5 million on taxable supplies of Rs464.8 million on the basis of concession available in the Sales Tax Act 1990, which exempts sales tax on international tenders.

In this case, the RTO-II officials approached the FBR Headquarters for verification about the company, which was awarded the tender in the category of international tender. On this, the Federal Board of Revenue through a letter on March 3, 2011 said that the contract awarded to Housing Enterprise through national competitive bidding (NCB) did not qualify as international tender, thus, it was not entitled for zero-rating, the officials said.

On the FBR instructions, the RTO–II initiated proceedings against the company and asked the principal officer of the company to explain the position but so far no reply has been received from the company.

The officials said that some corrupt officials at the regional tax office deliberately avoiding taking action against the company and even no show-cause notice has been issued for the recovery.

Prior to the latest contract, the FBR had awarded contracts to the company under tax reforms project, including Rs13.07 million sales tax issued against contract awarded in April 2002 for interior development work furnishing and refurbishment of model sales tax house and large taxpayers unit Karachi; Rs11.81 million sales tax refund issued on the project of refurbishment of medium taxpayers unit at Karachi, Dispute Resolution Complex at Karachi and Model Customs Collectorate in Karachi.

The officials said that both the projects were funded by the World Bank under the procurement method, ie, NCB and were not qualify for the international tender.

The company has been approached for its version but despite constant contact for three business days at the company's official landline phone, no one was available to comment on the issue. – *Courtesy International The News*

RCCI rejects FBR tax amnesty scheme

The business community of Rawalpindi has rejected the tax amnesty scheme by Federal Board of Revenue (FBR) and termed that the board is facilitating tax evaders rather taxpayers.

Rawalpindi Chamber of Commerce and Industry (RCCI) President Dr. Shimail Daud Arain said that the FBR is likely to fail to achieve its target of tax collection and now trying to use unethical ways and threatening by sending illegal notices to taxpayers which are unjustified.

He said that in every civilized country all facilities are being provided to taxpayers but in Pakistan; ineligible and incapable department like FBR shower his blessings on tax evaders and tease taxpayers through different tactics.

Dr. Shimail said that notices are being served without any prior investigation of the cases and no attention is being paid to listen the second party arguments it seems that board has become wild to achieve its target.

He was of the view that board is behaving and reminding the era of dictatorship but now it is democratically elected regime and such thing just cannot work. The RCCI president said that country is having 8 per cent tax to GDP ratio and government has set to achieve 15 per cent target of the said ratio but if FBR continue with such tactics it can be slip under 8 per cent. Rawalpindi Chamber strongly condemned FBR current role of allowing people to make their black money into white and demoralize the taxpayer community with their notorious strategies. RCCI is intact with all chambers of the country in this regard and soon announce a joint line of action to address the issue. – *Courtesy International The News*

Arms, ammunition from China: MCCs assessing duties as per new customs values

Collectors of Customs at the Model Customs Collectorates (MCCs) are assessing customs duty on the import of non-prohibited bore arms and ammunition from China on the basis of new customs values for accurate assessment. Sources told here on Wednesday that the 9mm pistols from China has been assessed at customs value of $120 per piece; 30 bore calibre (pistol) of Chinese origin $70 per piece and ammunition/cartridges for pistols 9mm and 30 bore would be assessed at customs value of $0.058 per piece.

The commission constituted by Supreme Court of Pakistan in its fact-finding report regarding smuggling of arms and ammunition had observed that the imported arms and ammunition (mostly of Chinese origin) is being assessed for customs duty and other taxes on the basis of values ascertained by the department almost 15 years ago. Sources said that now the Collectors of Customs are following the valuation recently determined in exercise of the powers conferred under Section 25-A of the Customs Act, 1969 Customs values of Arms & Ammunition (Pistols 9mm and 30 bore of Chinese origin Ammunition, thereof).

The Directorate General of Customs Valuation Karachi was approached by Model Customs Collectorate Appraisement (East) and Model Customs Collectorate Appraisement (West) for determination of Customs values of Chinese origin Pistols of 9mm and 30 bore calibre and their ammunition as these constitute major portion of imported non-prohibited bore arms & ammunition. The Federal Board of Revenue has also directed the Directorate General to determine the Customs values of Chinese-origin arms and ammunition. Accordingly, exercise to determine the Customs values of the aforesaid goods was conducted in terms of Section 25-A of the Customs Act, 1969.

The valuation methods given in Section 25 of the Customs Act, 1969 were followed. Transaction value method provided in Sub-Section (1) of Section 25 ibid was found inapplicable because the requisite information to determine the Customs values as per law was not available. Identical/similar goods value methods provided in Sub-Sections (5) & (6) of Section 25 ibid were also not found applicable due 10 unreliable values. Market enquiry as envisaged under Sub-Section (7) of Section 25 of the Customs Act, 1969, was conducted and values so worked out were taken up for determination of customs value of the subject goods. Thus, deductive valuation method under Section 25(7) of the Customs Act, 1969, was applied to arrive at the customs values of arms and ammunition of Chinese origin consisting of pistols of 9mm and 30 bore calibres and their ammunition.

Meetings were fixed with stakeholders to discuss the current international values of Chinese origin pistols of 9mm and 30 bore calibres and their ammunition. On 06-11-2013 a detailed meeting was held with representatives of Pakistan Arms & Ammunition Merchants & Manufacturer Association. Assistance in this regard was also obtained from the concerned functionaries of clearance collectorates.

In cases where declared/ transaction values are higher than the Customs value determined in this Ruling, the assessing officer shall apply those values in terms of Sub-Section (1) of Section 25 of the Customs Act, 1960. In case of consignments imported by air, the assessing officer shall take into account the differential between airfreight and sea freight while applying the Customs values determined in the ruling.

The one-man commission in its fact-finding report regarding smuggling of arms and ammunition had said that the imported arms and ammunition (mostly of Chinese origin) are being assessed for Customs duty and other taxes on the basis of values ascertained by the department almost 15 years ago. Since then, the Directorate General of Customs Valuation has ascertained customs values of a few types of arms but it is unclear as to whether the elements of freight, insurance and lading charges have been added to the ascertained values.

Similarly, no exercise has been conducted by the department over the years to ascertain the actual value of arms and ammunition being imported through the work back method of assessment by comparing the market prices of the frequently imported weapons.

Moreover, in cases where the Customs assessed values exceed the values allowed in the import authorisations of the Ministry of Commerce, the information is not being shared with either the L/C opening bank or the Ministry of Commerce to adjust/account for the excess values at the time of issuance of next authorisation.

Similarly, the department is also not taking any punitive action against the importers/dealers who exceed the authorised limits. As a result, importer opens the L/C for entire amount shown in the authorisation each year and succeeds in bringing quantities of his liking without any fear of punitive action or reduction of value quota for the next import. There is no evidence that the subsequent L/C was reduced on the advice of Customs, the commission added. – *Courtesy Business Recorder*

FBR paying over Rs 11.5 million per month rent for office buildings, Senate told

The Senate was informed Wednesday that Federal Board of Revenue (FBR) pays Rs 11,505,132 per month rent for the buildings hired for office accommodation. During question-hour in the Senate, state minister for interior Baleeghur Rehman said total 98 buildings have been hired by the FBR in all the four provinces. He said the buildings were hired other than the buildings owned by the government as per rules of the Ministry of Housing and Works.

He said 76 buildings have been hired in the capital and Punjab on a monthly rent worth Rs 8,114,865; five buildings in Sindh on monthly rent of Rs 2,925,397; 12 buildings in Khyber Pakhtunkhwa for Rs 333,710 per month; four buildings in Balochistan for Rs 86,720 monthly rent and Rs 44,440 is being paid for one building in Gilgit-Baltistan.

When asked if the government has any plans to have its own buildings than paying millions in rent every month, the minister said, it has been endeavour of the government to have its own buildings but by now there is no such policy and the matter is dealt on case-to-case basis.

The House was informed that the Federal Board of Revenue (FBR) has also hired 3,542 buildings for residential accommodation of the FBR employees across the country with 2,039 buildings in federal capital and Punjab, 1,109 buildings in Sindh, 213 buildings in KP and 181 buildings in Balochistan. The FBR pays Rs 369,653,679 rent for these buildings. However, it was not mentioned in the reply whether the amount stated was being paid on monthly or yearly basis.

Giving break-up, the minister said, the FBR pays Rs 206,387,601 as rent for the buildings hired for accommodations in Federal Capital and Punjab; Rs 106,995,819 for rent of buildings in Sindh; Rs 44,171,435 for buildings in KP and Rs 12,098,824 is being paid for residential accommodation of the FBR employees in Balochistan.

When asked about payment of hiring to employees, the minister said, it is paid as per rules of the Ministry of Housing and Works and ceiling of the employees. However, this ceiling varies and it amounts to more in big cities and less in smaller cities. – *Courtesy Business Recorder*

Import and supply: sales tax on fabrics reduced to three percent

In order to remove confusion regarding chargeability of sales tax on fabrics as finished good or raw material, the Federal Board of Revenue has reduced sales tax on import and supply of fabrics to 3 percent. In a written reply to the Senate here on Wednesday, Finance Minister Ishaq Dar said that the rate of sales tax on "fabric" has been rationalised @ 3 percent.

SRO. 898(I)/2013 had been issued to remove confusion on sales tax chargeable on supplies and import of 'Fabric'. In case of the textile sector, the rate of sales tax on raw materials is 2 percent while the rate of sales tax for finished goods is 5 percent.

There was confusion with respect to 'Fabric', as to whether it is a finished good or a raw material. The FBR was of the opinion that 'Fabric' is ready for use and sales tax @ 5 percent should be charged, while the taxpayers were of the opinion that 'Fabric' has to still undergo process of manufacturing, therefore, it is a raw material chargeable to sales tax @ 2 percent. In order to resolve this dispute and rather than leaving the determination of rate of sales tax on 'Fabric' to the field offices, the federal government as a conscious policy rationalised the rate of sales tax on 'Fabric' @ 3 percent.

To another query, Ishaq Dar said that no, it is not a fact that sales tax for unregistered retailers has been reduced from 17 percent to 1 percent. Retailers are covered under Chapter II of the Sales Tax

Special Procedure Rules, 2007 whereunder they are required to pay sales tax on the basis of their quarterly turnover. This scheme has not been changed for the retailers.

The rate of withholding sales tax on supply of goods, made to Sales Tax withholding agents by unregistered suppliers, has been reduced from 17 percent to 1 percent of the value of supplies through SRO 897(I)/2013, dated 04-10-2013 by amending the Sales Tax Special Procedure (Withholding) Rules, 2007. The rate of withholding tax of 17 percent had been agitated as highly exorbitant.

Keeping in view hardships faced by the registered taxpayers, particularly with regard to withholding of tax on purchases from unregistered persons, state of documentation of economy at present, rate of withholding tax on purchases made by registered persons has been reduced to 1 percent which, however, is not adjustable, he added. – *Courtesy Business Recorder*

Raising tax-GDP ratio: FBR preparing new strategy paper

The Federal Board of Revenue is preparing a new strategy paper containing tax policy measures to raise tax-to-GDP ratio up to 15 percent. Sources told on Wednesday that the new strategy paper would be formulated by the FBR after obtaining input from tax experts. The purpose of the whole exercise is to raise the tax-to-GDP ratio in the next five years for which new tax policy measures would be finalised.

The FBR has scheduled an internal workshop on "study to design the revamped/reformed FBR strategy," on January 9, 2014. Renowned economist Dr Hafiz A Pasha has prepared the aforesaid strategy paper proposing consolidation of FBR tax policy and administration reforms. Top economist will make presentation on the proposed strategy followed by interactive discussion, suggestions and inputs from the participants. The proposals relating to tax policy and administration, aiming at increasing tax to GDP ratio to 15 percent in next 5 years would be formulated by the FBR for incorporation in the strategy paper, sources added. – *Courtesy Business Recorder*

Safety of taxpayers' data: FTO's order not implemented yet

To safeguard the taxpayers' confidential and classified data, a key order has been issued by the Federal Tax Ombudsman (FTO) to devise a secure automated system and commission a thorough investigation by a credible third party in relation to the vulnerabilities of the FBR e-system, remained unimplemented.

Sources told that earlier, a former FTO observed that FBR appears to have badly failed in devising a secure automated online system to safeguard confidential and classified data of taxpayers. Gross negligence and incompetence together with possibility of collusion of Pral employees with criminal elements could not be ruled out.

Sources further stated that a crucial matter of insecure data was taken up by the former FTO on a public interest complaint filed by a Lahore based tax lawyer Waheed Shahzad Butt in C. No ISD/FBR(1)/2013. As per recommendations of the FTO, the FBR was directed to commission a thorough investigation by a credible third party in relation to the vulnerabilities of the FBR's e-system.

It is also learnt that FBR has decided to place new safeguards in the database of taxpayers to ensure security of sensitive, confidential and classified data by enhancing existing security features in the electronic systems maintained by the FBR. Order passed by FTO states that in the complaint to the FTO office presented the proof that how an E-Intermediary (EI) can play with the secret data of taxpayers. In order to highlight the easy access to the taxpayers' data, Waheed Shahzad Butt filed the Withholding Tax statements of a government department successfully and filed these documents to the FTO office in his complaint as proof. He filed the WHT statements of ECP, FPSC, Cabinet Division, and the FTO office.

The complainant, an advocate by profession, has alleged maladministration on the part of the FBR involving negligence and incompetence in ensuring security/safety of taxpayers' confidential and classified data. The main contention of the Complainant is that any EI can show a taxpayer as his client in the FBR's e-system even without knowing his e-mail ID or mobile number, thereby breaking into the confidential data held by the FBR. In order to ascertain the genuineness of the complaint, the Complainant and the relevant officials of FBR, including CEO Pral were called for a hearing. The CEO Pral, Manager Pral along with a representative of the FBR attended the proceedings.

The complainant then demonstrated how the withholding tax statement of a government department could be successfully filed. He filed the withholding statements of ECP, FPSC, Cabinet Division and FTO Secretariat. With permission, he successfully manipulated the FBR's e-system to show himself as an employee of FTO Secretariat who was paid a salary of Rs 25 million, with income tax deducted on his salary at Rs 5 million. If that was not enough indictment of the FBR's e-system, he filed a return of income of FTO Office for tax year 2010 with the Electronic Document Number (EDN) 31531105 showing an income of Rs 100 billion, with Rs 25 billion as tax paid by the FTO Secretariat and Rs 99 (only) as refund due.

The complainant remarked that if FBR data was any guide for the purposes of verification of income declared in the tax returns and tax paid, then FTO Secretariat was the 'highest tax-paying institution' that had deposited Rs 25 billion income tax in tax year 2010.

The departmental representatives (DRs) could not offer any plausible, justifiable defence against the evidence provided by the Complainant. They could not belie the withholding statements and tax returns of FTO Secretariat, among others. FBR appears to have badly failed to devise a secure automated online system to safeguard confidential and classified data of taxpayers.

Gross negligence and incompetence together with possibility of collusion of Pral employees with criminal elements could not be ruled out. All this is reflective of maladministration as defined in Section 2(3) of the FTO Ordinance 2000; the FTO order added. – *Courtesy Business Recorder*

FBR pays over Rs 11mn monthly rent for hired buildings

The Senate was informed on Wednesday that Federal Board of Revenue (FBR) monthly pays Rs 11,505,132 as rent for the buildings hired for office accommodation. Minister of State for Education, Training and Standards for Higher Education Baleeghur Rehman informed the House that total 98 buildings have been hired by the FBR in the Federal Capital and provinces. Speaking on behalf of Finance Minister Ishaq Dar, Baleeghur Rehman said these buildings had been hired other than the buildings owned by the government as per rules of Ministry of Housing and Works.

The contract signing requirements are also met as per the government rules, he added.

The Minister said that 76 buildings have been hired in Federal Capital and Punjab on monthly rent worth Rs 8,114,865; five buildings in Sindh province on monthly rent of Rs 2,925,397; 12 buildings in KPK province for Rs 333,710 per month; four buildings in Balochistan province for Rs 86,720 monthly rent and Rs 44440 is being paid for one building hired in Bilgit-Baltistan.

When asked if the government has any plans to have its own buildings than paying millions in rent every month, the minister said, it has been endeavor of the government to have its own buildings but by now there is no such policy and the matter is dealt on case to case basis.

Meanwhile, the House was informed in reply to another question that FBR has also hired 3,542 buildings for residential accommodation of FBR employees across the country with 2,039 buildings in Federal Capital and Punjab province, 1109 buildings in Sindh province, 213 buildings in KPK and 181 buildings in Balochistan and the FBR pays Rs 369,653,679 rent for these buildings. However, it was not mentioned in the reply whether the amount stated was being paid on monthly or yearly basis.

Giving break-up, the minister said, the FBR pays Rs 206,387,601 as rent for the buildings hired for accommodations in Federal Capital and Punjab province; Rs 106,995,819 for rent of buildings in Sindh province; Rs 44,171,435 for rent of buildings in KPK; and Rs 12,098,824 is beng paid for residential accommodation of the FBR employees in Balochistan province.

When asked about payment of hiring to employees, the minister said, it is paid as per rules of the Ministry of Housing and Works and ceiling of the employees. However, this ceiling varies and its amount to more in big cities and less in smaller cities.

“The rental ceiling is sufficient in six big cities while for other cities it is very nominal,” the minister explained. – *Courtesy Business Recorder*