

Tax Review/Taxation

Daily Alert Service

Huzaima & Ikram
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v.

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Kind Regards,

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Editor

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Australia

Repeal Carbon Tax, Australian Industry tells Senate

The Australian Senate has been urged to “spare business and households additional cost and uncertainty,” and scrap the carbon tax.

The call was made by the Australian Industry Group (Ai Group), which warned of “great complications” should the Senate vote against the Government’s proposals. It is thought that electricity pricing and contracting deals will bear the brunt of any extended delays.

Group Chief Executive Innes Willox recommended that both the Labor Opposition and Green parties no longer focus on less crucial elements of the Government’s repeal package, such as the Clean Energy Finance Corporation and the Climate Change Authority. He stressed that resolving these issues was not urgent, because the two bodies do not impose any additional costs on energy. The Treasury should, therefore, “take the chance to repeal the core carbon pricing mechanism right away, giving energy users, generators and retailers the maximum chance to prepare.”

Willox added that Australians need “a sound policy basis for future investment.” To provide this, the country must “clear away the carbon tax and to focus on the major task of designing the Direct Action approach to meet the emission reduction targets to which Australia has committed.”

Prime Minister Tony Abbott’s Coalition does not have a majority in the Senate. However, the Senate’s Environment and Communications Legislation Committee, which reviewed the repeal bills, is backing the Government on the issue. It found that the levy is “one of the highest and broadest carbon taxes in the world,” and has “had a significant impact on costs for Australian businesses and families.”

The Senate is expected to vote on the legislation within the next week and half, and the Government intends for the tax to be removed by July, 2014. – *Courtesy Daily Times*

United States

CBPP: US ‘Tax Extenders’ Extension should be funded

With pressure growing on the United States Congress to agree to the annual renewal of the group of federal tax provisions requiring frequent annual renewal (the “tax extenders”), the Center on

Budget and Policy Priorities (CBPP) has advised that, given current fiscal deficits, policymakers should make a firm commitment to provide funding for any extension of these provisions.

There are said to be some 64 tax provisions expiring on December 31 this year, some of more significance than others. However, the CBPP confirms that “paying for those tax extenders that Congress continues would have a significant impact on long-term deficits.”

For businesses, the tax extenders available until end-2013 include increased expensing under Section 179 (full deduction on cost of qualifying equipment), the 50 percent bonus depreciation; the work opportunity tax credit; and the credit for research and development expenses. For individuals, they include mortgage tax relief, the deduction for state and local sales taxes, education tax deductions, and tax-free distributions from individual retirement accounts for charitable purposes.

US public debt amounts to 75 percent of gross domestic product (GDP) in 2013 and, assuming the tax extenders are continued but not paid for, the CBPP projects that it will climb under current policies to 99 percent of GDP in 2040. If policymakers were to offset the roughly USD50bn annual cost of continuing the tax extenders, it forecasts that the debt-to-GDP ratio would rise about 8 percent less, reaching 91 percent in 2040 and eliminating about one-third of the projected rise in the debt ratio by 2040 under current policies.

In addition, the CBPP feels that having to pay for the extension of any tax extenders would also improve tax policy decision-making. “Imposing the same type of fiscal discipline on the extenders that we impose on other budgetary measures would apply needed scrutiny,” it says. “In addition, the need to pay for continuing those extenders that withstand scrutiny should provide a vehicle to pare some highly inefficient tax subsidies.”

It is advised that “Congress should adhere to this ‘pay-for’ norm on tax extenders, whether it extends them in a stand-alone bill or as part of broader tax reform.”

“While the primary reason to require offsets for the tax extenders is fiscal responsibility, such a move also should improve tax policy by subjecting these provisions to needed (and, in some cases, long overdue) scrutiny,” the CBPP concludes. “Policymakers may decide that some extenders are not worth maintaining. And a commitment to paying for the extenders would nudge

policymakers to address some weaknesses in the tax code as they searched for other revenues to offset the extenders.” – *Courtesy Daily Times*

Netherlands

Netherlands, Curaçao Seal Double Tax Deal

Dutch State Secretary for Finance Frans Weekers and Curaçao's Finance Minister José Jardim have reached an agreement on new bilateral arrangements, aimed at preventing double taxation between the Netherlands and Curaçao.

Both Ministers aim to submit a law to the Dutch Council of Ministers at the beginning of next year, and have therefore signed a letter of intent to this effect. Furthermore, Ministers Weekers and Jardim agreed that the Netherlands will support Curaçao in exchanging information, in accordance with the international standard developed by the OECD and the European Union.

According to the Dutch Finance Ministry, the arrangements provide for a new distribution of taxing rights in respect of pension income. On the basis of the new provisions, the Netherlands will be able to impose withholding tax on payments of pensions built up in the Netherlands, although received in Curaçao, upon emigration. Moreover, the Netherlands will be able to levy inheritance and gift tax for a period of up to five years, following emigration from the Netherlands to Curaçao.

In return, and of significant benefit for Curaçao, withholding tax will be waived for participation dividends. However, to prevent abuse of the regulation, additional requirements will be placed on shareholders in receipt of dividends.

Commenting, Curaçao's Finance Minister Jardim made clear that the deal offers stability and future prospects for Curaçao's financial sector. Further, it is important for the International Financial Sector in Curaçao that the new provisions maintain the link with the international market, Jardim emphasized.

Weekers welcomed in particular the fact that Curaçao has agreed to participate in automatic information exchange.

The new accord, which replaces the existing agreement between the two countries dating from 1964, is expected to enter into force on January 1, 2015. The Netherlands now aims to prepare new fiscal arrangements with Aruba and St Maarten. – *Courtesy Daily Times*

Time for filing of Income Tax returns extended

The Federal Board of Revenue (FBR) on Sunday announced that the time for filing of Income Tax returns had been extended to 12:00 midnight on Monday (today). According to the FBR, due to Sunday falling on 15th December, 2013 and to facilitate taxpayers the time for filing of Income Tax returns has been extended to 12:00 midnight on 16th December, 2013. Designated branches of National Bank of Pakistan and State Bank shall remain open till 10 PM on 16th December, 2013.

For further detail please contact the FBR Helpline 0800-00-227 or visit www.fbr.gov.pk, FBR added. – *Courtesy Business Recorder*

FBR to not allow import of new phones without IMEIs

The Federal Board of Revenue (FBR) will not allow import of new phones including cellular phones without proper International Mobile Station Equipment Identity (IMEIs). Sources told here on Sunday that the FBR has issued instructions to the Collectors of Customs Model Customs Collectorates regarding *Suo moto* case No 16 of 2011 (regarding Law & Order situation in Karachi), restriction on imports of phones without proper IMEIs.

Refer to the Supreme Court of Pakistan's order dated 29.4.2013 in *Suo Moto* case No 16/2011 (regarding Law & Order situation in Karachi) and to say that import of phones without proper IMEIs may not be allowed, the FBR's directive said.

The Collectors of Customs are requested to ensure that compliance of the above instructions are adhered to and receipt of this direction may please be acknowledged, the FBR added.

When contacted, an expert said that at present there is no ban on the import of new phones without proper IMEIs. Following the FBR's new instructions to the Collectors of Customs, the customs would not allow clearance of imported phones without proper The International Mobile Station Equipment Identity.

If the government intends to verify whether duties and taxes have been duly paid on the imported new cellular phone, it could be checked with the help of the IMEIs. This would also be instrumental in verifying whether the phone has been legally imported or not. In case of IMEIs of cellular phones, these could be located to check stolen phones etc, they added. – *Courtesy Business Recorder*

Pathetic response witnessed in filing returns: notices to be issued to non-filers

In view of a disappointing response of taxpayers in filing of returns, the Federal Board of Revenue (FBR) will go with full force against the non-compliant taxpayers by issuing notices to the non-filers under Section 114 of the Income Tax Ordinance 2001 from December 17.

Sources told here on Sunday that despite repeated extensions in the date of filing of income tax returns, even the existing taxpayers are not seemed to be interested in filing of their tax returns for Tax Year 2013. The FBR has witnessed declining trend in filing of income tax returns due to weak enforcement of the tax machinery across the country. Till December 14, only 0.230 million taxpayers have filed their returns electronically. Similar number of returns has been filed by existing taxpayers manually. Total number of return filers till the said date is between 0.350 to 0.400 million, which is very low as compared to over 0.7 million returns filed last year. In Tax Year 2012, the total number of income tax filers for both corporate and non-corporate sector was 735,188. The number of return filers may touch 0.450 to 0.500 million for Tax Year 2013 in case a very healthy response is witnessed in last date for filing of returns. Keeping in view an extreme disappointing response of existing taxpayers, the similar trend may continue on the last date for filing of returns. The situation is so disappointing that if the return filing crosses 0.500 million by December 16, it would be a surprising for the tax authorities. So far, the FBR has not decided to give fifth extension in filing of tax returns unless the government issues any directive on last moment in this regard.

Sources said that the weak enforcement of the field formations is the prime reason for such an unhealthy response of taxpayers in filing of returns.

The enforcement of the field office is evident from the fact that the poorest response has been witnessed at the Tax Facilitation Kiosks specially established to facilitate filing of returns. It is pathetic that the tax officers are sitting in the Tax Facilitation Kiosks to encourage return filing and persons doing business in big markets are still not ready to file returns.

Sources said that the SROs would be issued during the current week to encourage for filing of returns by dormant taxpayers, non-filers and un-documented persons as per scheme already announced by the government.

Giving examples of the poor response of the taxpayers, sources said that the pathetic response has been witnessed at the Tax Facilitation Kiosks in Islamabad and Rawalpindi where persons doing their running businesses are not ready to file their returns. Regional Tax Office Islamabad established a number of kiosks including in Blue Area, F-10 Markaz, I-8 Markaz, Centaurus, Super Market and other prominent business areas of Islamabad. When the FBR inquired about tax compliance at the kiosks, the Chief Commissioner concerned informed the FBR that the response is pathetic. Similar kind of situation has been witnessed in the adjacent city of Rawalpindi where kiosks failed to attract taxpayers to voluntarily come for filing of returns. If the persons engaged in running businesses are not ready to file returns, the FBR is left with no option except going with full force against the non-compliant taxpayers from December 17 after expiry of extended last date for filing of returns ie December 16, 2013. The FBR has categorically conveyed to the Chief Commissioners to immediately start issuing notices to the non-compliant persons from December 17 under section 114 of the Income Tax Ordinance 2001. – *Courtesy Business Recorder*

After lapse of 60 days: Revenue Division required to implement FTO's recommendations

Revenue Division is required to implement the recommendations issued by the Federal Tax Ombudsman after lapse of 60 days under the newly introduced Federal Ombudsmen Institutional Reforms Act, 2013 (FOIRA), a letter has been issued by the Adviser (I&M) FTO to the Secretary Revenue Division and Chief (IR-Revenue Budget), FBR, Islamabad.

Sources told that to implement the FTO's recommendation, Adviser (I&M) has issued a letter to the Secretary Revenue Division, Islamabad and Chief (IR-Revenue Budget), FBR asking them to implement the recommendation issued by FTO and submit compliance report to the FTO Secretariat.

When contacted a Lahore-based tax lawyer Waheed Shahzad Butt said that it is the primary responsibility of the Ombudsman to address the problems of the aggrieved masses efficaciously. Any person aggrieved from the recommendations issued by FTO may file a representation within 30 days directly to the President without involving any ministry, division or department and in the Presidency, a retired FTO or Federal Ombudsman or a person who

had been or qualified to be a judge of Supreme Court would process the representation within 90 days. While under section 14(2) of the FOIRA, the operation of recommendations shall remain suspended for a period of sixty days. After the lapse of statutory time period revenue division shall be obliged to implement the recommendations issued by FTO.

Waheed further said that another aspect of the enactment of the FOIRA is to ensure effective implementation of orders issued by the FTO. In routine concerned authorities had been blocking the orders passed in favour of taxpayers under one pretext or the other, however, section 24 of the FOIRA that has overriding effect on all other fiscal enactments, if applied in good faith and in letter and spirit, can strengthen the process of real accountability and enhance effectiveness of the forum of FTO in providing speedy relief to taxpayers of Pakistan by redressing their grievances and promoting good governance.

In case of non-compliance or defiance of orders, cases of contempt of court may be initiated against those officials who do not implement the orders of the FTO in the given time period and in case of non-compliance the concerned officers may be sent to jail which may be extended up to six months.

Tax lawyer further added that earlier former FTO Dr Muhammad Shoaib Suddle has directed the Chairman FBR to share information related to out-of-court settlements of sales and income tax cases on recommendations of the alternative dispute resolution committees (ADRCs) with requester. The orders of the ADRCs commonly known as out-of-court settlement between the FBR and taxpayers on disputed tax-related matters are not confidential and the revenue body has no legal authority to deny this information to people under the ordinance. Earlier FBR has termed the required information very sensitive and started consultation with its legal advisers for not providing copies of the ADRC orders to the applicant. On refusal, the applicant approached the FTO with a complaint.

In a letter, the applicant/requester said that the right to be informed on all aspects of the work done by public functionaries, other than information that may be categorised as privileged, is enshrined in the Freedom of Information Ordinance and guaranteed by Article 19-A of the Constitution of Pakistan. It is a fundamental right of every citizen to seek information that would

enable him to evaluate the ADRC's operational effectiveness as an alternative dispute resolution forum.

By denying this information, tax lawyer alleged that the FBR chairman has violated provisions of sections 3, 4, 5, 6, 9, 10, 11, 12 and 13 of the Freedom of Information Ordinance. The FBR Chairman is a state functionary duly appointed for properly administering and implementing the fiscal laws, including the Income Tax Ordinance 2001 and the Sales Tax Act 1990, and, any citizen when denied information by a government department / public office, can, under section 19 of the Freedom of Information Ordinance, approach the FTO and seeks his intervention.

The FBR is ordered to provide the applicant with the requested information, in the format given by him, within 21 days from the date this order is received, according to the order issued by the FTO. Said order was challenged before the President and is pending disposal even after lapse of statutory time limit of 90 days, Waheed added. – *Courtesy Business Recorder*

SINDH REVENUE BOARD CIRCULAR

Subject: **Budget proposals 2014-2015 – proposals in relation to the Sindh Sales Tax on Services Act, 2011 (Sindh Act No. XII of 2011), and the rules and notifications issued thereunder.**

The Sindh Revenue Board (SRB) proposes to formulate budgetary measures (for the Sindh Budget 2014-15) in relation to taxation and procedural provisions of Sindh Sales Tax on Services Act, 2011 (“the 2011-Act”). the Sindh Sales Tax on Services Rules, 2011 (“the 2011-Rules”), the Sindh Sales Tax Special Procedures (Withholding) Rules, 2011 (“The 2011-Withholding Rules”) and the notification issued under the said 2011-Act.

2. It has been a policy of SRB to consult all stakeholders, taxpayers, Chambers, Associations and Groups before finalizing the budget proposals. With this end in view, SRB requests all persons (including the Taxpayers, Chambers of Commerce & Industry, Trade Associations, Tax Bars, institutes of Chartered Accountants and Cost & Management Accountants, etc.) to send their written proposals in the following format **URGENTLY** so as to reach the undersigned, through e-mail (followed by sending its hard copy by post/courier), latest by 31st December, 2013:–

Sr. No.	Name of the Act/Rules/ Notification proposed to be amended also new provisions (i.e. new sections, rules, notifications) proposed to be made	Section No., Schedule No., Tariff Heading No., Rule No., Para No., Involved	Existing Provisions	Proposed Provisions	Reasons and rationale of the proposal	Revenue and rationale of the proposal	Remarks (if any)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

2013 TRI 2009 (H.C. Del.)

HIGH COURT OF NEW DELHI

S. Ravindra Bhat and Najmi Waziri, JJ.

CIT, Delhi-III

v.

M/s. Orient Instrument P. Ltd.

FACTS/HELD

Loss from shares dealing cannot be deemed to be from “speculation” under Explanation to section 73 if company is not engaged in the “business” of shares dealing

1. The assessee, engaged in the business of trading of crafts paper etc claimed a loss of Rs. 5.53 lakhs arising on account of a transaction whereby it purchased and sold shares. The AO held that under the Explanation to s. 73, the said loss was deemed to be arising from a speculation business and could not be set off against other business profits. However, the CIT(A) and Tribunal allowed the assessee’s claim on the basis that the assessee was not engaged in the “business of purchase and sale of shares” so as to fall into the mischief of the Explanation to s. 73. In appeal before the High Court, the department relied on Bhikam Chand Jankilal 131 ITR 554 (MP) and argued that even a single transaction of sale or purchase of shares might amount to a “business”. HELD by the High Court dismissing the appeal:

The assessee was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission. By all means, the transaction whereby it purchased the shares and incurred loss on account of the fall in the value of the share was a solitary one. The findings of the Tribunal that the transaction did not constitute the business carried on by the company, cannot be termed as perverse or unreasonable. No substantial question of law arises (Standipack 350 ITR 251 (Cal) noted)

Appeal dismissed.

ITA No. 112 of 2000.

Decided on: 20th November, 2013.

Present at hearing: Sanjeev Sabharwal, Sr. Standing Counsel, ,
for Appellant. Dr. Rakesh Gupta with Rishabh Kapoor,
Advocates, for Respondent.

JUDGMENT

S. Ravindra Bhat, J.—

1. The following substantial question of law was framed at the time of admission of this appeal:—

“Whether the Tribunal was justified in its interpretation of the explanation to Section 73 of the Income-tax Act 1961?”

2. The assessee in the present case at the relevant time was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission etc. It reported Rs. 5,53,500/- as loss for the relevant period AY 1991-92 on account of a transaction whereby it purchased and sold shares. The Assessing Officer was of the opinion that this amounted to a speculative transaction and consequently the loss could not be set off against the assessee's profits earned from other businesses. The disallowance was carried in appeal unsuccessfully by the assessee. The Appellate Commissioner returned the findings that the assessee was not engaged inter alia in the business of purchase and sale of shares so as to fall into the mischievous transaction under Section 73. The Appellate Commissioner took into consideration the Resolution of the company made at the relevant time on 30.10.1990 and also the fact that it was engaged in other business. The Appellate Commissioner dismissed the assessee's appeal and the matter was carried in further appeal to the ITAT which accepted the assessee's appeal.

3. Mr. Sanjeev Sabharwal, Sr. Standing Counsel for the Revenue urges that the transaction in question was a speculative one falling within the Explanation to Section 73(4). He placed reliance upon the decision of Madhya Pradesh High Court reported as *Commissioner of Income Tax v. bhikam Chand Jankilal*, 131 (1981) ITR 554 to say that even a single transaction of sale or purchase of shares might amount to business. Counsel for the assessee Dr. Rakesh Gupta, on the other hand, relied upon the decision of the Calcutta High Court reported as *Standipack Pvt. Ltd v. Commissioner of Income Tax* (2013) 350 ITR 251 (Cal.) in support of this submission.

4. In the present case, the facts are that the assessee was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission. By all means, the transaction whereby it purchased the shares and incurred loss on account of the fall in the value of the share was a solitary one. The findings of the Tribunal that the transaction did not constitute the business carried on by the company, cannot be termed

(H.C. Del.)

CIT, Delhi-III v. M/s. Orient Instrument P. Ltd.

CL. 2011

as perverse or unreasonable. In the circumstances, the Court is satisfied that no substantial question of law arises.

5. The appeal is accordingly dismissed.
