

TAXATION

(Weekly Tax Journal)

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Huzaima Bukhari

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This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, **Taxation** in printed form, is sent through post and digital version of **Tax Review International** is made available for download at www.huzaimaikram.com

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SECP Circular No. 01 of 2014, dated January 07, 2014.
Sales Tax General Order No. 02 of 2014, dated January 09, 2014.
Sales Tax General Order No. 03 of 2014, dated January 09, 2014.
No. PRA/Orders.06/2012/03, dated January 10, 2014.

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Kind regards,

Huzaima Bukhari

Editor

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Suite # 14, 2nd Floor, Sadiq Plaza, Regal Chowk, Mall Road,
Lahore, Pakistan

Phone: 042-36365582 & 042-36280015 Fax 042-35310721

Email: sales@aacp.com.pk website: <http://aacp.com.pk>

Judgment Writing

by
*Qaiser Javed Mian**

“It is said that this play [i.e. the judgment writing] is the oldest surviving courtroom drama in world literature. Much of literature, as in life, deals with the tension between the [desire of] people to take justice into their own hands [take] revenge or engage in self-help as opposed to the processes of the law, which, importantly from our point of view, are determined by a fair trial and fair judgment” [albeit]¹

In the state of growing litigation, backlog and insufficient research facilities, a good quality judgment has become a challenge of the day in the legal fraternity. A well written to the point judgment based on comprehensive analysis of facts and laws is not only an indication of the intellectual level of the judge but is also a reflection of the standard of the judicial system. In view of this author, the most important element of a good judgment is “CLARITY”. Clear thinking is the key to clear writing. When we speak of a “speaking judgment”, it entails clarity of mind of the judge. A speaking judgment exhibits two things:

I. It explains the decision to the parties concerned.

II. It makes available reasons for an appellate Court to consider.

A judgment should be a self contained document.² Simple, brief and clear is the best. Some judgments almost write themselves. The practice of writing lengthy judgment is not appreciated.³ The judge should write to express not to impress. Only the material facts should be stated in a chronological order. What is required is a reasoned judgment and not reasons for the judgment.

The judgment formulates the decision the judge has made. It informs the parties exactly about what the Court orders them to do and how the decision shall be executed. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution and the contents of the decision.

It is pertinent to point out that tone and attitude are extraneous to a balanced judgment. If the courtroom is allowed to vibrate with the heat generated outside it the adjudicatory process suffers and the search for truth is stifled.⁴

* LLB, LLM (U.S.A) (Research Department, Punjab Judicial Academy) 15-Fane Road, Lahore.

¹ Justice Roslyn Atkinson, “Judgment Writing” (Delivered to Magistrates Conferences, gold Coast, March 21, 2002).

² see e.g. Balraj Taneja and another v. Sunil Madan and another, AIR 1999 SC 3381.

³ See. e.g. Amina Ahmed Dossa vs. State of Maharashtra; AIR 2001 SC 656.

⁴ see e.g. State “Delhi Administration” v. Laxman Kumar and others, 1986 Gr. L.j 155

Even if the criticism is reformatory, the words should be dignified and restrained.¹ Unbalanced language is out of place in a judicial adjudication.² The Indian Supreme Court disapproved the practice of passing adverse remarks against presiding judge of the Lower Court as it damages the judicial system as a whole³.

CIVIL PROCEDURE CODE

SECTION 33

“The court, after the case has been heard, shall pronounce judgment, and on such judgment decree shall follow”.

ORDER XX RULE No.1.

(Quote) 1. “JUDGEMENT WHEN PRONOUNCED:–

On completing of evidence the court shall fix a date, not exceeding fifteen days, for hearing of arguments of parties.

2. The court shall after the case has been heard, pronounce judgment in open court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates” (Unquote)

A judgment in other words is a statement given by the judge of the grounds of a decree or order u/s 2(9) C.P.C. which defines judgment, as “JUDGEMENT MEANS STATEMENT GIVEN BY THE JUDGE OF THE GROUNDS OF A DECREE OR ORDER”. The “order” has been defined in section 2(14) C.P.C. as “ORDER MEANS THE FORMAL EXPRESSION OF ANY DECISION OF A CIVIL COURT WHICH IS NOT A DECREE.”

Irrespective of whether it is an “ORDER” or a “DECREE” it must contain discussion of a question(s) at issue and reasons therefore. It must be precise, logical, clear and without creating confusion in the minds of the parties. There should be a statement of grounds of decision in a judgment. Appellate judgment which does not comply with the provision of **Order XLI Rule 31** is no judgment in the eye of law. A judgment which is duly written but not publicly announced is ineffective and further proceedings taken by the same court are held to be invalid⁴ (**PLD 1962 SC 97**). The judgment can be pronounced at once or on some further day after hearing the arguments. Further day means within reasonable time.

¹ see e.g. Alok Kumar Roy v. Dr. S.N. Sarma and another, AIR 1968 SC 453.

² see e.g. D.Macropollo and Co. (private) Ltd v. D. Macropollo and co. (Private) Ltd, Employees Union and others, AIR 1958 SC 1012.

³ see e.g K.P.Tiwari v. State of M.P.1994 Cr L.j.1377.

⁴ See PLD 1962 S.C. 97.

Where a party is not allowed to conclude its evidence, judgment is liable to be set aside. A decree falling short of the requirements of order XX C.P.C. with regard to its contents is not sustainable. In case of a compromise decree, the decree sheet should conform to compromise and not to the original entries in the plaint. A judgment is the one written, signed and pronounced as per Court-Rule 2 of the Lahore High Court Rules and Order Vol. 1 Chapter II-A which draws attention to the following directions:

1. The judgment should be written either in the language of the Court, or in English;
2. When a judgment is not written by the presiding officer with his hand, every page of such judgment shall be signed by him;
3. It should be pronounced in open Court after it has been written and signed;
4. It should be dated and signed in open Court at the time of being pronounced and when, once signed shall not afterwards be added or added to save as provided in Section 152 or on review;
5. If it is a judgment of any Court other than a Court of Small Causes, it should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision;
6. If it is the judgment of a Court of Small Causes, it should contain the points for determination, the decision thereon and the reasons for such decision;
7. It should contain the direction of the court as to costs.

General Features of a Judgment:

1. Self contained
2. Unambiguous
3. Conveniently Intelligible
4. Lucid and capable of only one interpretation without guess or probabilities.
5. no vagueness or ambiguity
6. no possibility of double interpretation
7. no extraneous considerations
8. reasons (See General Clauses Act)

JUDGMENTS ON JUDGMENT WRITING

1. "Issues in civil proceedings are to be decided on preponderance of evidence. In case of word against word party on whom onus lay must fail"; See **case titled Allah din vs habib, cited as PLD 1982 SC 465**

2. "Limitation does not run where impugned order is passed without hearing and notice to a party whose presence was otherwise necessary"; See **case titled Mst Rehmat Bibi & others vs Pannu Khan and other cited as NLR 1982 SCJ 166.**
3. "Judgment passed without hearing and without informing the party of the existence of the ex-parte order is no judgment question of limitation does not arise against void order"; See **case titled Sayeed Nazir hasan vs settlement commissioner cited as PLD 1974 Lah 434. See also case titled Muhammad Ashraf etc. vs. Muhammad Usman etc. cited as (1973 SCMR 403;). Also see generally PLD 1971SC 61.**
4. "The requirements that orders of court ought to be publicly made and announced is not only a matter of accepted judicial procedure ,but invariably a requirement of law regulating the functioning of Civil and Criminal Courts"; See **case titled Lachmandas vs Central Govt cited as PLDI973 SC 379**
5. "Order appealed against found to be a nullity - Appellate Authority can entertain and decide on merit even a time barred appeal against a void order."; See case titled **Sayed Muhamad Alam vs Syed Mandi Hassan cited as (PLD 1970 Lah 6).See generally PLD 1971 Lah. 746 and PLD 1969 Lah.1039.**
6. "Mere observation in a case under Order 37 C.P.C based on Pronote while considering the grounds of leave on P.L.A that the defendant has not given any justification for grant of leave not considering the affidavit attached thereto , and asking the plaintiff to prove his case , the conclusion drawn by the trial judge was wrong. Judgment feel short of requirements of order **XX C.P.C**"; See **case titled Muhammad Yousaf vs Allah Yar cited as PLD 1987 LAH 101**
7. "Judgment would mean judicious determination of dispute between parties specifying grounds and substantial reasoning for arriving the particular decision. Judgment, held ought to be self contained, unambiguous, conveniently intelligible, lucid and capable of only one interpretation without leading for guess or probabilities with regard to matters sought to be determined. Proper or valid judgment would be devoid of apparent vagueness, ambiguity or possibility of different or double interpretation. **Bar of limitation for filing** appeal , against decrees passed in utter disregard of legal requirement viz recording of reasons for granting decree would not be applicable"; See **case titled Mistry Muhammad Hassan vs Haji Said Muhammad cited as 1986 CLC 1241 (Quetta).**
8. "The signing of judgment as envisaged **u/s 369of Cr.P.C** is signing in open court at the time of pronouncement of the judgment and not signing at the home .in the case, therefore, the simple writing and signing of the judgment was wholly ineffective and did not operate as a bar to further proceedings"; See **case titled Amin Sharif vs Syeeda Khatoon cited as PLD 1962 SC 97.**

9. "Order void ab initio- A nullity- such order does not require to be set aside in appeal or any other proceedings"; See case titled **Khuda Bakh vs Khusi Muhammad etc. cited as PLD 1976 SC 2008.**
10. "Order of a tribunal found to be without jurisdiction. All successive orders based upon it are illegal and liable to be quashed in writ jurisdiction".
11. "Judgment did not conform to the provisions of law as it was to be based on evidence in the case and **not other material or factor** was to be taken into consideration. Furthermore the relief had to follow findings on the issue and should have been consistent with those findings. Such a disposition of the matter could not qualify to be a judgment in law and was liable to be set aside"; See **case titled. Meaple Leaf Cement Factory Ltd vs Waryam etc cited as PLD 2006 LAH 506. Also see 2006 YLR 108.**
12. "Lack of issue -wise findings not fatal" See **case titled Umer Din vs. Ghazanfar AM cited as 1991 SCMR 1816; Also see generally 2006 SCMR 185; 2006 YLR 711; PLD 2007 PESH 14**
13. "However, issue-wise judgment from the original trial court"; See case titled **Habibullah vs Azmatullah cited as PLD 2007 SC 271. See also 2007 MLD 476.**
14. "Trial court while recording its findings on merit of the case did not further discuss the evidence. It is not a reasoned judgment under Order XX"; See **case titled. Amir Tufail vs Muhammad Sadiq etc cited as 2006 CLD 91; See also case titled Mst Yasmin Akhter vs Abdul Mateen Zahid cited as 2007 CLC 972. (Shariat Court AJ & K).**
15. "Issue wise discussion not mandatory for Appellate Court"; See **case titled Niamat Khan and others vs Hamzullah Khan etc cited as 2006 CLC 125; See also 2006 CLC 662**
16. "Even ex-party order/judgment is required to be a speaking order/judgment even if passed under **Order IX Rule 6**. If initial order was void, no limitation"; See **case titled. Wapda vs Mir khan Muhammad Khan Jamali cited as 2006 CLC 92(Quetta).**
17. "Mere reproduction of evidence by the Appellate Court did not mean that the evidence of the parties has been discussed or referred to, judgment revealed cursory and casual approach of Appellate Court to the case. Judgment suffered from non-reading of evidence on record .Trial court had acted illegally etc. Judgment of the appellant was set aside and case was remanded to the Appellate Court"; See **case titled. Sayed Zulfiqar Hussain Naqvi vs Sayed Gulzar Hussain Shah cited as 2005 YLR 2817.**
18. "In a pre-emption suit, parties themselves modified original decree. Supreme court accepted, agreed and modified the original decree in terms thereof;. See **case titled Muhammad Sadiq and others vs Taj and others cited as 2005 SCMR 1668.**

19. "Decree in suit for rendition of accounts - levy of stamp duty on such decree, scope, phrase any property" as used in section 2(15) of stamp act 1989 would include both types of moveable or immovable properties" See **case titled M/S Faisal Traders vs M/S Syngenta Pakistan Ltd cited as 2005 YLR 2503.**

20. "Where law provides for writing, announcing and signing a judgment that must be done in a way to get validity to the judgment" See **case titled Raja Muhammad Sarfraz Khan & others vs Noor Muhammad cited as 2007 SCMR 307.**

21. "Judgment written and signed after its pronouncement would be a mare irregularity"; See **case titled. Mst. Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143, Also see 2007 CLC 760.**

22. "Conclusion of Distt. Judge that trial Judge had recorded his judgment with pencil in his own hands comprising 33 pages and it was impossible that such a judgment could be written in 45 minutes and that too while Trial Judge (Senior Civil Judge) was in bathroom, upheld by the Supreme Court as unexceptionable"; See **case titled. MST Zohra Begam and others vs Muhammad Ismail cited as 2008 SCMR 143.**

23. "Constitutional jurisdiction of High Court, delayed pronouncement of judgment after 10 months of hearing arguments, proceedings involved civil rights, hence, considered as civil proceedings, Regardless of whether jurisdiction exercised by High Court was original appellate or constitutional, once proceeding before High Court were of civil nature ,the C.P.C would apply unless specifically excepted. Unreasonable delay of 10 months had caused prejudice. Bulk of documentary evidence going to the root of the case did not find mention in the High Court Judgment. Supreme Court converted Leave petition into appeal and remanded the case"; See **case titled . Muhammad Awais and others vs Fedration, cited as 2007 SCMR 1587.**

24. "Specific performance , Rescission of contract. Decree of the Court for specific performance of agreement is in the nature of preliminary decree and extension of the time for deposit of sale consideration - conveyance deed has to take place- during this period decree-contra continues to subsist-extension of the time is not an alteration or modification of a decree"; See **case titled. Tasneem Ismail and others vs M/S Wafi Associates and others cited as 2007 SCMR 1464**

25. "Contents of judgment and decree excepted from judicial officer that he would pass the speaking order to enable everyone to have an idea or the view which found favour with the presiding officer or such court or Tribunal- Judgment should contain concise statement of the case, points for determination which had been raised, the decision thereon reason for such decision judicial order must be speaking and meaningful by it self exhibiting that the court had applied its mind to the resolution of all the material issues"; See **case titled . Mollah Ejahar AM vs Govt Of East Pakistan and others cited as PLD 1970 SC 173, See also case titled**

Muhammad Irshad and Others vs MST Hanifa Begum alias Bagi and others cited as PLD 2007 SC (AJ & K) 20.

26. **TIME FOR PRONOUNCEMENT OF JUDGMENT** “Order XX, R.1 ,High Court Rules & Orders (Lahore) Vol .V Chap IV R. 5 -not only O. XX R.1 C.P.C or Rules 5 of the Chapter IV of the High Court Rules and Orders Vol V but also the fiscal statutes had no prescribed time for pronouncement of the judgment, nevertheless , it was desirable to deliver the judgment without inordinate delay so that the justice must not only be done by manifestly appear to be done”; **M.A.NO.338/L.B of 2003, 2005 PTD (TRIB) 318.**

27. “Ground in the Appellate Court, inter alia, that **Trail Court** was not legally competent to **decide four issues collectively** being against O XX R.5 C.P.C -held - no doubt Trial Court should have given **finding on each issue separately**, but where certain issue were linked with each other and where considered together, such consideration was not violative of O XX R. 5 C.P.C”; See **case titled MUHAMMAD AFZAL & OTHERS VS WALI MUHAMMAD** cited as **2004 CLC 658 AND case titled KARIM BUX & 2-OTHERS VS MANZOOR AHMAD ETC,** cited as **PLD 2005 (Kar) 50; Also see generally 2004 CLC 1438; 2004 CLC 370.**

28. “Service Tribunal mentioned in detail respective pleadings but had not resolved those points. No reason given in support of conclusion nor evaluation of documentary evidence made/discussed .It is no judgment in the eye of law”; **2004 PLC (C.S)843**

29. “Petitioner’s grievance was that the notified officer passed the order against them after the notified officer had been transferred. Notified officer was transferred on 12-1-1998 with immediate effect but he still heard the case on 13-1-1998and decided it on 16-1-1998. Contention that the order of transfer would have taken effect after the same has been published in the official Gazette Held- Notified officer should not have adjudicated the case because his transfer was with **immediate effect** on 12-1-1998. It’s **legal efficacy** was not dependent upon its publication in the Gazette as it took effect immediately”; See **case titled Barkat ali vs Addl Commissioner** cited as **2004 MLD 1633**

30. “Successor judge can pronounce judgment written by his predecessor-Transferred judge who heard the case **could complete the judgment which could have been announced by his successor.** If case had been heard by Court or presiding officer, such officer could pronounce judgment/order even if he had been transferred or promoted. Where a presiding officer had concluded the hearing of the matter before his transfer, such officer could decide the matter before relinquishing the charge. The ratio is that if the outgoing judge has already heard the case, he could decide the same”; See **case titled. Barkat Ali vs Addl Commissioner** cited as **2004 MLD 1633**

31. “Findings of the Rent Controller on the issue of default were given in a single sentence and did not discuss the accumulative effect of statement
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of the tenant where he had explained reasons for non-tendering of the rent. Judgment was violative of O .XX irrespective that C.P.C did not apply in the rent matters”; See **case titled Mujib-ur- Rehman vs Zafar ali Khan cited as 2004 CLC 189 (B).**

32. “Trail Court failed to give issue wise findings- Appellate Court while maintaining the judgment did not form points for determination ignoring mandatory requirements of O. XLI R.31 C.P.C judgments & decrees of both the lower courts set aside” See **case titled MST Feroza vs Anjumman-e- Ittehad-e- Baluchan & others cited as 2004 YLR 1535 Kar.**

33. “Under Land Acquisition Act Section 23, failure of referee Court to give findings on issue of the time of possession from when the interest will be payable to them- Judgment suffered from non -decision on such issue-Case Remanded”; See case titled **M. Salim & 7-others vs Land Acquisition Collector, cited as 2004YLR 807 Lah.**

34. **COSTITUTIONAL PETITION**

“Member Board of Revenue, reserved the judgment/order and passed order after about ten months of hearing the case. Statutory obligation under Order XX Rule 1 C.P.C was to decide matters within thirty days of hearing the case. The order was not sustainable and was declared to be of no effect”; See **case titled. Muhammad Latif vs Member Board of Revenue/Chief Settlement Commissioner & others cited as 2003 CLC 1064 Lah.**

35. “Order XX , High Courts Rules & Orders Vol. 1 , Chapter 1, R.2 Correction in judgment except u/s 152 C.P.C or a review after announcement , when the court becomes “ functus officio”. Therefore “*correction*” was not sustainable in the eye of law”; See case titled **MIS Norrani Traders vs. Civil Aviation cited as 2001 YLR 2277 Kar. See also case titled, Pakistan Industrial Promoters vs Nawazish Ali Jafari cited as 2003 YLR 1277, Also see case titled Govt NWFP vs. Arsala Khan and others cited as 2003 CLC 1189 &PLD 2001 Pesh.47.**

36. “Judgment to be signed. Sending of the files to the office of the Court was a ministerial act and could not be determinative of the date of the signing the judgment”; See case titled **Mian Muhammad Shahbaz Sharif vs. Election Commission of Pakistan, cited as PLD 2003 Lah 646.**

37. “Necessary ingredients of the judgment explained”; See **case titled. Akhter Saeed vs. Azad Kashmir Government cited as PLD 2003 SC (AJ& K) 1; Also see 2002 CLC 4 Pesh.**

38. “Disposal of interconnected and interlinked issues would not cause any prejudice to a party”; See **case titled Umer Din vs. Ghazanfer ALI & OTHERS cited as 1991 SCMR 1816, See also case titled Aziz ullah Khan etc. vs. Gul Muhammad Khan cited as 2000 SCMR**

1647 and case titled Abdul Sattar vs. Bashir Ahmad etc. cited as 2004 CLC 370 Kar.

39. "Trail court had dealt with the matter in a proper way and the omission to discuss the issue wise ratio had not resulted in injustice. High Court declined to interfere with the concurrent judgments below"; See **case titled Hazrat Ali Khan vs. Mir Wali Khan, cited as 2003 YLR 801 Pesh.**

40. "No need to specifically give the issue no or reference as long as the question in question i.e. the "limitation" was consciously dealt with"; See **case titled Mst Satto alias Sattan vs. Gaman, cited as 2003 CLC 456 Lah.**

41. "Decree must agree with judgment"; See case titled **Dilmeer vs. Rajab Ali & Others, cited as 2003 MLD 484 Lah.**

42. Order XX Rule 1 (2) - CONTITUTION ART 254

"Provisions of O.XX R. 1 (2) are directory in nature and not mandatory and do not provide for consequence in case it is not strictly adhered. High Court announced judgment after more than five months in violation of O.XX R .1 (2) C.P.C was in consequential having no material bearing on merits"; See **case titled. Jumma Khan & others vs. MST Bibi Zenaba & others cited as PLD 2002 SC 823. Also see 2002 CLC 1704.**

43. "Where no evidence was produced on the issue framed, the Courts below were left with no other option but to decide the same against the side on which onus of proof lay"; See **case titled . Aziz ullah khan vs. Gul Muhammad khan, cited as 2000 SCMR 1647.**

44. "Judgment, decree or order- Distinction"; See **case titled Sardar Muhammad Ibrahim Khan vs. Govt of AJ & K, cited as PLD 1990 SC (AJ & K) 23.**

BASIC LAWS

- (i) C.P.C Section 2 (9); 2(14); 33, order XX.
- (ii) General Clause Act
- (iii) High Court Rules & Orders (Vol. 1 Chapter II-A)

Fiscal prudence: having no thoughts at all

*Editorial, Courtesy Business Recorder
Dated January 06, 2014*

Dubbed as a New Year's gift to the nation, Prime Minister Nawaz Sharif has rejected the summary sent by Oil and Gas Regulatory Authority (Ogra) to the Ministry of Finance, proposing an increase in the prices of petroleum products ranging between Rs 1.38 and Rs 3.60 per litre with effect from 1st January, 2014. According to the summary, the price of kerosene oil was to be increased by Rs 1.38

per litre, light diesel oil by Rs 1.80 per litre, petrol by Rs 2.91 per litre, HOBC by Rs 3.60 per litre, HSD by Rs 2.63 per litre and JP-I by Rs 2.74 per litre. In the working paper, Ogra had estimated ex-depot petrol price to be increased to Rs 115.67 per litre, high speed diesel to Rs 119.38 per litre, kerosene oil to Rs 109.38 per litre, light diesel oil to Rs 103.04 per litre, and HOBC to Rs 141.23 per litre. The prices of petroleum products were calculated to soar mainly because the country imports a major part of its fuel requirements from global markets where local currency's value against international currencies, including the US dollar, have gone down. A Petroleum Ministry official said that "the Prime Minister has rejected the proposal on increasing oil prices and the government would provide a subsidy worth Rs 5.36 billion during January, 2014, to maintain the prices of these products at the current level in a bid to avert further escalation in prices of essential commodities."

The decision of the Prime Minister to reject the summary of Ogra for an increase in the prices of oil products seems to be clearly motivated by political expediency but hardly makes any economic sense in the current economic situation, especially when all-out efforts are needed to be made to contain the overall fiscal deficit of the country, release financial resources of the banks for private sector credit requirements for productive purposes, and subdue inflationary pressures in the economy. Another worry for the policymakers could be the concern of the IMF for violation of the understanding to pass on the full impact of the increase in oil prices in the international market to domestic consumers. Prices of petroleum products during January, 2014, were obviously to be increased due largely to a sharp depreciation of the rupee against other currencies in the preceding period as stipulated under the formula. The refusal of the Prime Minister to increase the oil prices may not only annoy the Fund staff but could also set a bad precedent by raising the expectation of people and businessmen that the level of domestic prices of oil products could also be kept unchanged in future despite the rise in prices in the international market. In our view, Nawaz Sharif's decision could have been somewhat justified if the position of budget and current accounts had been satisfactory and there was enough fiscal space available to absorb the negative impact of the decision without raising inflationary expectations. However, the fact of the matter is that all these variables have either deteriorated or not improved as projected during the year. Federal Board of Revenue, for instance, has managed to collect only Rs 1020 billion during the first half of 2013-14 as against the target of Rs 1090 billion, showing a shortfall of around Rs 70 billion. The shortfall would continue to be substantial even if FBR is able to add to the revenue collection figure by another Rs 10-20 billion after reconciling the final data. A major reason for low collection of revenues could be watering down or withdrawing some of the budget proposals under political pressure mounted by various vested groups. Keeping the prices of oil unchanged during the

month of January, 2014, could only worsen the fiscal outcome. The current account deficit of the country which has already deteriorated by 175 percent during the first five months of FY14 as compared to the corresponding period last year could also increase further due to higher demand of oil products caused by comparatively lower domestic oil prices, depending, of course, on price elasticity of oil products in Pakistan. Another flaw of the present policy decision is the lack of understanding or a deliberate attempt to play to the gallery by the political leadership without realising the long-term consequences of their actions. The decision of keeping the prices of oil products unchanged, for instance, may neutralise the onslaught of certain political parties like that of Tehreek-e-Insaf on the inflation front to a certain extent, but the long-term effect on prices of a higher budget deficit is uglier due to its more pervasive inflationary impact on the lives of ordinary people, particularly the poor.

Tax Directory of all

by
Huzaima Bukhari & Dr. Ikramul Haq

‘All lawmakers are taxpayers’—Finance Minister, Ishaq Dar,
Business Recorder, January 7, 2014

On the first day of 2014, the Chairman Federal Board of Revenue (FBR), while appearing before Public Accounts Committee, offered an illegal, rather obnoxious interpretation, that since “tax has been deducted from salary of a parliamentarian, therefore, he/she cannot be considered as a tax defaulter”. One wonders how ignorant is Chairman FBR and parliamentarians. Are they really ignorant of the fact that under section 182(1) of the Income Tax Ordinance, 2001 penal action is warranted for not filing income tax returns and/or wealth statements? People want to know how our innocent and ignorant members of parliament survive on salary as sole source of income vis-à-vis their style of living—sprawling bungalows, luxury cars, army of guards and foreign travels, just to mention a few.

Unfortunately, the loyal Chairman FBR was defending the indefensible. An editorial of English newspaper summed it up brilliantly: “For them to say that they pay income tax is disingenuous; after all the salaries they receive as members of parliament have taxes deducted at source. But few, if any, members of parliament rely solely on this income. They usually have business interests, property and agricultural concerns on which they either pay no tax or severely underreport their income. We expect our politicians to lie to us, be it about taxation or any other matter, but the FBR should not be part of the cover-up”.

The editorial went to say that “tax dodgers are aided in their lawlessness by the FBR, where corruption reigns from the very top to the bottom. The

higher-ups have political connections that lead them to turn a blind eye to tax evasion by the wealthy while the tax collectors at the bottom are happy to accept a personal bribe in lieu of paying taxes. To try and change this rotten culture is why we put pressure on parliamentarians to make public their tax returns. We have been misled too often to take them and their cronies at their word when they deny cheating the nation”.

On January 7, 2014, the Finance Minister informed Senate that FBR was directed to ensure issuance of National Tax Numbers (NTNs) to parliamentarians by January 31, 2014. Mr. Ishaq Dar said “a wrong impression has been created that Pakistani lawmakers do not pay taxes, while income tax was regularly being deducted from the salaries of all members of Senate, National and Provincial Assemblies”. The minister said the last date to file tax returns for the MPs was December 16, 2013 and now after issuance of NTN numbers, the tax details of all MPs would be made public by February 15, 2014. Dar pointed out that Chairman FBR had already given a detailed briefing to Public Accounts Committee of National Assembly on the issue. In order to remove misperception, he added, the FBR had also set up desks in parliament to facilitate MPs, but even then some 12 percent members could not get their NTNs. He said in the first phase, tax details of parliamentarians would be made public and in the next phase tax details of all taxpayers would be published within two months. The statement made by the minister was appreciated by opposition senators. Aitzaz Ahsan, leader of opposition in Senate, specially thanked the minister and said the step taken by him was commendable.

The statement by Mr. Ishaq Dar confirmed that the report, **‘Taxation by Misrepresentation’**, (<http://cirp.pk/TAXATION%20BY%20MISREPRESENTATION.pdf>), released jointly by the Center for Investigative Reporting in Pakistan (CIRP) and Sustainable Development Policy Institute (SPDI), was correct. The report claimed that “out of 1,070 lawmakers voted to the national and provincial assemblies in the 2013 elections, 47 percent did not pay income tax and 12 percent of these members do not have a National Tax Number (NTN). Non-taxpaying MNAs are in all the major parties. The PML-N has the lion’s share with 54 such MNAs. PTI follows with 19 non-taxpaying MNAs. The PPP has 13, JUI-F seven and MQM five. The PkMAP and JI have three each. The AAPML, PML, ANP and NP have one each MNA in this category”. The CIRP in its 2012 report, **‘Taxation without Representation’** exposed that “in both Houses of the Parliament, the Senate and National Assembly, there are 446 lawmakers and 300 of them have turned out to be tax-dodgers. Among them are those 88 MPs who don’t have National Tax Number (NTN), let alone paying income tax. There are 16 MNAs whose taxes couldn’t be examined due to lack of basic information like NTNs and Computerized National Identity Card (CNIC) numbers—one Senator from the calamity-hit area claimed tax exemption and one

National Assembly seat is vacant”—(<http://www.cirp.pk/Electronic%20Copy.pdf>).

According to a news item in *Business Recorder* (January 8, 2014), the FBR will allocate NTN to the parliamentarians taking into account nomination papers filed by the contesting candidates for Elections-2013 with the Election Commission of Pakistan (ECP). Out of nomination papers, the FBR has collected the CNICs of all the winning candidates of Election-2013. The FBR will differentiate between the non-NTN holders and NTN holders. A separate list of non-NTN holder parliamentarians would be finalised. On the basis of CNICs, the FBR will allocate the NTNs to the non-NTN holder parliamentarians and deliver the same to them for becoming compliant taxpayers. During the whole exercise, the parliamentarians may not voluntarily come forward and inform the FBR about their NTN status. At the same time, the process of filling of NTN forms may not be adopted by the parliamentarians. The FBR will itself complete the whole process and issue the NTNs to parliamentarians to facilitate them.

In pursuance of directions of Finance Minister, the FBR will ensure issuance of NTNs to all the parliamentarians by end of January 2014. In the past, on the request of the Senate Standing Committee on Finance, the FBR decided to establish a cell or office at the Parliament House to assist parliamentarians in obtaining NTNs and filing of income tax returns. The members of the committee had asked the FBR chairman to set up offices in the parliament and provincial assemblies to issue NTNs to them. At that time, the parliament secretariat had not provided any place to the FBR for setting up “Special Advisory Desk” to assist parliamentarians, including Members of National Assembly and Senate in obtaining NTNs. The FBR had also contacted the secretariat for deputation of tax officials for assisting the parliamentarians in obtaining NTNs or discharging their tax liabilities. The FBR had deputed senior tax officials to assist parliamentarians in discharging their tax liabilities, including filing of income tax returns. In this connection, the FBR had finalised the arrangements for setting up office at the Parliament House and waited for the response of the parliament secretariat. The entire scenario suggests that FBR feels helpless in dealing with the tax delinquents sitting in the parliaments. This is the tragedy of Pakistan—lawmakers are lawbreakers.

Tax system is one of the fundamental elements of constitutional democracy. The questions such as who is to be taxed, how much and for what purposes, are constitutional issues to be settled by the legislators—if elected members do not discharge their tax obligations diligently, the entire democratic system gets discredited. The imposition, administration and enforcement of taxes raise problems about the rule of law, proper division of powers and the role of judiciary etc. The exposure by CIRP that almost 70% of legislators did not file tax returns in 2011 presented a shameful scenario. The situation, as elaborated by latest joint report of

CIRP-SDPI, is equally shocking. No society can even perceive that its legislators are tax delinquents—for some it is nothing short of subversion of constitution for which Musharraf is facing trial these days. The legislators are under oath to work within the four corners of supreme law of the land and their sovereign power to levy taxes stands nullified if they commit *en masse* violation of tax laws enacted by them!

No taxation without representation is a cardinal principle of democracy—Article 77 of our constitution says that **no tax shall be levied for the purposes of the Federation except by or under the authority of the Act of Parliament.** The reports of 2012 and 2013, prepared by CIRP/SDPI, show that this principle is perpetually and flagrantly violated by the legislators themselves. Implementation of Rule of Law determines the failure or success of a society. In the tax context, it means that taxes shall be imposed through a proper consultation method, through parliamentary process, rather than through administrative discretion [statutory regulatory orders (SROs)] and the resulting legislation must be respected by all.

The name and shame game in tax non-compliance, however, should not be confined to the members of parliaments alone. It must cover all, especially the powerful segments of society. All persons in the service of Pakistan, holding public offices and elected should file wealth statements conforming to their declaration of assets and liabilities filed under the respective laws governing them. The reports of CIRP/SDPI are only confined to parliamentarians; they should conduct similar studies for high-ranking State functionaries, men in *khaki* and *mufti*.

The issue of tax declarations of holders of public offices and high-ranking State functionaries should be tackled democratically. There should be a bipartisan Parliamentary Standing Committee on Asset Disclosures & Investigation. FBR should be obliged under law to convey to this Committee all the declarations filed by persons holding public offices. The Committee should have powers to compare declarations filed under the Civil Servants Act, 1973, Army Act, 1952 and related rules, Representation of People Act, 1976, the Senate (Election) Act, 1975, Rule 4 of the Political Parties Rules, 2002 with those filed under the Income Tax Law. In case of any discrepancies or complaint of suppression and concealment, the Committee could ask FBR, NAB, FIA, MP, Military Court, as the case may be, to take action under the law.

For bringing transparency, all the political parties should be required to file their tax returns. Section 13A of Indian Income Tax Act, 1961 requires mandatory filing of returns by the political parties and Chief Election Commissioner of India instructs the Indian Central Board of Direct Taxes (CBDT) to scrutinize accounts submitted by political parties. The Central Information Commission of India also directs Income Tax Department to disclose in public interest details of donors given by political parties in their tax returns. With this information in public domain, the Commission believes there will be transparency in the

funding of both small and big parties, besides checking the flow of black money in the electoral process. These elements are completely missing in our polity. Chief Justice of Pakistan and our Election Commission should take note of this and the Parliament must amend existing election laws debarring tax delinquents from contesting elections.

The process of accountability in Pakistan must start with scrutinizing of declaration of assets, liabilities and taxes paid by politicians, high-ranking civil and military officials and judges. The civil society and media should come forward to force the parliament to abolish all laws relating to secrecy and/or immunity and enact a comprehensive legislation for obtaining information by any citizen under Freedom of Information Law. FBR should be authorised by the federal government to publish annual tax directory (it was done only in 1993 and 1994). This step will not only expose the rich and mighty who have amassed wealth, have failed to pay taxes under the law, but will also help to promote the much-needed tax culture.

The Federal Finance Minister should direct and authorise the FBR to publish (in digital and printed form) ‘Tax Payers’ Directory’ (covering both income tax and sales tax) of all persons. Section 216(1) of the Income Tax Ordinance, 2001 says that all particulars contained in any statement made, return furnished, or accounts or documents produced or any evidence given, or affidavit or deposition made, in the course of any proceedings under this law or any record of any assessment proceedings or any proceedings related to recovery of a demand **shall be confidential and no public servant save as provided in this Ordinance may disclose any such particulars.** There are many exceptions to this rule as contained in sub-sections (3), (4) and (5) of section 216. For example, it is clearly provided in sub-section (5) that **nothing contained in sub-section (1) of section 216 shall prevent the Board from publishing, with the prior approval of the Federal Government, any particulars filed by any taxpayer and sub-section (6) in categorical terms states: “Nothing contained in sub-section (1) shall prevent the Federal Government from publishing particulars and the amount of tax paid by a holder of a public office as defined in the National Accountability Bureau Ordinance, 1999 (XVIII of 1999).”**

It is now an admitted fact that in 2011 about 70% of Pakistani legislators—members of Senate and National Assembly—did not comply with section 116(2) of the Income Tax Ordinance, 2001 by not filing tax returns, wealth statement and personal expenses having taxable income of Rs. 500,000 [the limit from 2012 is raised to Rs. one million]. Instead of admitting their lapse and taking remedial steps, they accused FBR for “illegally” (sic) disclosing data. FBR was also found guilty for not taking any action against these defaulters and by not publishing their tax data, despite the clear instructions of the Federal Tax Ombudsman, to ensure

transparency in electoral process. Thus in elections of 2013, these tax delinquents managed to contest and succeed at many places.

On discovering lapse on the part of legislators, it was the duty of FBR to promptly issue notices under the law to all those who failed to file their tax returns with wealth statements, but it did not bother and on the contrary its chief boss kept on defending the tax cheats sitting in the Parliaments. No doubt many legislators violated section 114 and 116 of the Income Tax Ordinance, 2001, but the fact remains that FBR was equally guilty of failing to issue notices under section 114(3) and 116(1) of the Income Tax Ordinance, 2001 to these defaulters. It is pertinent to mention that non-filing of return and wealth statement by any member of parliament attracts penalty under section 182(1), prosecution under section 191(1)(a) of the Income Tax Ordinance, 2001 and ultimately disqualification under Article 62(f) of the Constitution of Pakistan.

In all the leading democracies of the world, laws exist which ensure that people seeking votes to become their representatives should have integrity and character. Discharging of tax obligations is a requirement of law of the land and its violation by any individual attracts provisions of Article 62(f) of the Constitution of Pakistan which says: "A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless he is sagacious, righteous and non-profligate, honest and *ameen*, there being no declaration to the contrary by a court of law". Can a violator of income tax law escape the operation of this provision of supreme law of the land even when no action is taken by FBR against him and it is incontrovertible that he did not file income tax return and wealth statement required under the law?

It is not out of place to mention that two important nominees of Barack Obama in his first term—Tom Daschle and Nancy Killefer—withdraw their names after it emerged that they failed to keep their taxes in proper order. Let the political parties tell us if they know how many of their leaders have no problems with taxes. We, being practicing tax lawyers and having long experience as tax administrators, can say without any fear of contradiction that majority of them will be disqualified if we implement the democratic tradition followed by Barack Obama after landslide and historic victory in 2008 by admitting that he "screwed up" by nominating tax delinquents.

Our rulers, on the contrary, take pride in rewarding known corrupt and offenders by giving them important public offices. This is why our history is that of '**Barren Years**'—phrase aptly adopted as title of book containing editorials and columns by late Mazhar Ali Khan, veteran Pakistani journalist, written as editor of *Viewpoint*. The agenda of change, even from a pure moralistic point of view, must start from one's self and own house. Those who are accusing others of tax avoidance are required to first prove that they have discharged their own liabilities diligently. There cannot be selective accountability and escape from law by using the attractive slogan of "change" or "reform" nor in their garb

can anyone be allowed to rise above law by claiming himself to be a custodian (self-acclaimed) of morality. First of all let Mr. Ishaq Dar tell us why assets worth billions are kept abroad by his own sons, party bosses and their siblings. Nation wants him to refute with evidence charges of investment by Ali Dar in HDS Group (<http://www.hdsgroup.org/>) in UAE. Citizens expect that soon he will enlighten them about the story ‘**The truth about Rs.3.48 billion Sharifs loan default**’, published on April 9, 2013 in a section of Press [<http://www.thenews.com.pk/Todays-News-13-22152-The-truth-about-Rs348-bn-Sharifs-loan-default>].

It is a matter of record that even political parties in Pakistan do not file tax returns and FBR has never bothered to issue them notices. In India, there is a mandatory provision of law [section 13A of Income Tax Act, 1961] requiring political parties to file returns. Chief Election Commissioner of India asks the Indian Central Board of Direct Taxes to scrutinize accounts submitted by political parties. Central Information Commission of India also requires Income Tax Department to disclose in public interest, details of donors given by political parties in their tax returns. Are our political parties ready to do this? Never, as it will expose the flow of black money in the electoral process. Neither Election Commission nor FBR has ever bothered to consider this vital issue till today. Even the Supreme Court has not taken cognizance of this matter while passing many orders for conducting fair and free elections.

A meaningful change in electioneering requires that political parties should not only keep proper accounts and get them audited by reputed firms, but also file income tax returns, which should be made public. It would force them to take into their folds only those people who honestly discharge their tax obligations. The process of filtration within the parties is a necessary step towards a transparent and democratic setup and Election Commission of Pakistan should ensure its implementation.

In Pakistan, it is worth noting that violation of tax laws is not confined to parliamentarians. The *ashrafiya* (elites)—militro-civil bureaucracy, landed aristocracy, politicians, religious and spiritual leaders (*ulema and pirs*), loan beneficiaries, unscrupulous business tycoons—flout laws of the land with impunity and take pride in it. Since assets and tax declarations of powerful militro-civil-judicial hierarchy are not available, the citizens cannot know how much state land was given to them on throw-away prices and whether they paid tax on differential of market value as envisaged in section 13(11) of the Income Tax Ordinance, 2001 for this and other similar favours at taxpayers’ expense. This is the stark reality of today’s Pakistan—legislators make a mockery of laws enacted by them, and the mighty militro-civil-judicial complex takes cover under special laws to avoid public disclosure of asset and tax declarations!

Article 19A of the Constitution of Pakistan says that “**every citizen shall have the right to have access to information in all matters**

of public importance subject to regulation and reasonable restrictions imposed by law.” Explaining the scope and import of this fundamental right, added in the supreme law of the land through 18th Amendment, the Supreme Court in *Watan Party & Others v Federation of Pakistan & Other* PLD 2012 Supreme Court 292 [commonly known as Memogate Scandal] held that “Article 19A has thus, enabled every citizen to become independent of power centres which, heretofore, have been in the control of information on matters of public importance..... Article 19A is a grant of the Constitution and, therefore, cannot be altered or abridged by a law enacted by Parliament...It, therefore, will not for this Court to deny to the citizens their guaranteed fundamental right under Article 19A by limiting or trivializing the scope of such right through an elitist construction whereby information remains the preserve of those who exercise state power.” Since our apex court has championed the cause of people’s right to information in PLD 2012 Supreme Court 292, it is a legitimate expectation of the citizens of Pakistan that as a first step, the honourable judges of Supreme Court and High Courts voluntarily make public their assets and tax declarations as was done by their counterparts in India many years back. The high-ranking military and civil officials should also do it to counter the criticism of the parliamentarians that they have been singled out in respect of disclosure of asset and tax declarations.

The exercise of constitutional right to access to information in all matters of public importance is necessary for transparency, accountability and good governance—essential elements of democratic dispensation. At the heart of Article 19A is ensuring accountability of all. Logically, the right to information must start from those who judge, adjudge and legislate. While legitimate concerns have been expressed about blatant violations of tax laws by the parliamentarians, no effort is made till today to public the tax and asset declarations of the powerful members of military-civil-judicial complex that has been beneficiaries of state lands and never paid tax on the same as required under section 13(11) of the Income Tax Ordinance, 2001.

The meaningful and effective exercise of Article 19A can make all four pillars of the State—Legislation, Judiciary, Executive and Media—accountable before law. Right to information in all matters of public importance, access to official record and free availability of what is owned by privileged classes must be assured as it will help improve governance, transparency and rule of law. Paying taxes is a constitutional obligation of all citizens—any violation by anyone should be dealt with according to law without any fear or favour for any person, notwithstanding his position in society. If lawmakers commit any lapse in respect of their tax obligations, they must be punished more rigorously than others, as they are custodians of public faith and money.

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.

* The writer is an advocate and is currently working as an associate with Azim-ud-Din Law Associates Karachi. To see author's other areas of interest visit Zafars Blog on International Studies <http://blogoninternationalstudy.blogspot.com/>.

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 take place.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

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 1980 and 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

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 iudicem 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.

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 rules 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.

Dar and data

by
Anjum Ibrahim

Federal Finance Minister Ishaq Dar has blamed the caretakers and the PPP-led coalition government for the current rise in inflation in the country during his briefing to the Cabinet and the media. Dar then proceeded to provide highly implausible data -implausible not only because the Pakistan Bureau of Statistics simply does not have the requisite data gathering machinery to be able to provide quarterly Gross Domestic Product (GDP) growth rate irrespective of the Finance Minister's directives but also because the released 5.2 percent growth is simply not backed by supporting data.

There are no independent economists who can possibly defend Dar's blame-game, except possibly those who are either desirous of a government post or those who are currently employed by the state. Dar took his blame-game to the level of the ridiculous when he presented two summaries to the cabinet and the media pertaining to the caretaker set-up approving the rise in electricity tariff and 190 billion rupee rise in taxes as per an agreement with the International Monetary Fund (IMF) as proof that his hands were tied in negotiations for the 6.4 billion dollar Extended Fund Facility. Given the Finance Minister's select and limited recall of what he himself said on the floor of the House it is appropriate to remind him of his statement on June 27 on the floor of the House: "The IMF programme shall be in the interest of Pakistan and on our terms and conditions... I have my own plans if we do not agree on the new loan programme." In his usual repetitive mode he added "even if the IMF does not give us a loan, we will not impose new taxes...in case of IMF programme or no programme, there would be no danger of any crisis. I have my own plans if we do not agree on the new loan programme."

There is clearly a discrepancy between what he said in June and what he said last week. Dar is guilty of three major falsehoods. First, he belied his

own oft repeated claim that he successfully negotiated a package with the IMF that was on his terms and in the nation's interest rather than proposed by the Fund team; or the caretakers. IT needs to be restated that the IMF like other multilaterals is sensitive to support for its programme from an elected political leadership as opposed to a short-term caretaker set-up that has no public support or in other words, Dar's ownership of the programme in June is credible relative to his 2014 blame-game.

Secondly, Dar overlooked the fact that the present government decided not only to keep the Caretaker Water and Power Minister Musaddaq Malik as an advisor to the Water and Power Ministry, a man who no doubt proposed among other steps the rise in tariffs, to reduce the subsidy which was unsustainable during the caretaker set-up. Of course in his defence the SBP Governor may argue that he did say that the need to go on an IMF programme surfaced by the middle of 2013. However the Governor would be hard-pressed to justify that it is better to negotiate from a position of strength than doing it when one is on his knees.

And finally and most obviously, any elected government can change the taxes levied at a moment's notice and in this context it is relevant to note that Dar enhanced the sales tax by one percent - from 16 to 17 percent in the budget effective less than a week after he was sworn in as the Finance Minister, which further fuelled inflationary pressures. A great majority of economists would argue in favour of tax cuts when economy is slowing down. He also imposed the income support levy without first clearing it from the Ministry of Law, which has been challenged in a court of law, and has also been compelled to withdraw his budgetary measures designed to enhance documentation of the parallel illegal economy because the PML-N's main support base, the business community, threatened strike action and withdrawal of support. Dar had also budgeted a rise in income tax payable by those who earn less than 150,000 rupees per month - a severely flawed decision that he was forced to withdraw when the *Business Recorder* pointed it out. The list of his blunders within the taxation measures proposed in the budget is longer than during the tenure of previous finance ministers and by blaming the caretakers he has simply let the genie out of his own bag of too obvious badly performed tricks.

Dar also claimed in the briefing that he anticipates the inflow of 10 billion dollars this year alone. Such a large amount has no precedence in the history of this country. After 9/11 when Pakistan decided to support the US in the war on terror and the US literally opened the floodgates of assistance total support in nearly a decade was around 10 billion dollars. Be that as it may, Dar budgeted a little more than 5 billion dollars (576.4 billion rupees) or a little less than half of what he now claims. There is no doubt that post-September 2013 Extended Fund Facility IMF programme approval there would be a jump in programme lending/budgetary support given that since 2010 there was no inflow under this head subsequent to

the suspension of the 2008 IMF Stand-By Arrangement due to failure to comply with the power sector and tax reforms. Dar budgeted 110 billion rupees (a little over one billion rupees) as programme loans but in his cabinet/media briefing he upped the amount from the World Bank to 1 billion dollars and in this context, it is relevant to note that the World Bank has never ever extended that large a support under programme lending. What is surprising however is the fact that project lending, which one assumed would have increased given the numerous much publicised deals with China and Turkey, is budgeted to decline to 159 billion rupees from 183 billion rupees in the revised estimates of last year.

So where is the 10 billion dollars expected to be generated from? According to the budget, 79 billion rupees would be generated from divestments of public sector entities which Dar rounded off rather inexplicably in his presentation to one billion dollars. The question is if the climate for privatisation in the country (including from outside investors) is favourable and the response has to be in the negative for two reasons. First, while Dar has been compelled to back down from several of his tax proposals and announced yet another amnesty scheme designed to lure black money into documentable investments yet past precedence indicates that its success would be limited. And secondly, investors continue to shy from Pakistan due to law and order issues. Besides while our numerous past governments have been over-optimistic as far as budgeting privatisation proceeds is concerned yet they have never ever been credited in the time period specified.

So where does Dar expect the 10 billion dollars from? More borrowing at higher interest rates sourced to Eurobond floatation (one billion dollars), remittance-based bond floatation (one billion dollars - not likely as remittance income is largely to meet the housing and monthly needs of a family), global rupee bond (one billion dollars) privatisation proceeds (800 million dollars) despite no agreement with a UAE entity in sight, and shares divestment one billion dollars. In other words, the inflow of 5.8 billion dollars is extremely iffy. Add the Coalition Support Fund that as per Dar's briefing has not been cleared since October 2012 and it is doubtful if more than 750 million dollars will be remitted - given the cessation of Nato trucks via Khyber Pakhtunkhwa by the Pentagon.

One can only hope that the Prime Minister takes cognisance of his Finance Minister's tall claims with absolutely no finesse that appears to be very obvious to all but the Prime Minister.

MPs tax details to be made public by Feb 15

Amid a firestorm over the tax returns filed by elected public representatives, Finance Minister Ishaq Dar told the Senate on Monday that tax details of all tax payers, including parliamentarians, will be made public by February 15.

Earlier, taxpayers were found understating their assets and incomes in an attempt to cheat the Federal Bureau of Revenue and causing losses to the exchequer. He said that the Federal Board of Revenue has been directed to issue national tax numbers to all the parliamentarians by the end January.

Dar assured that all parliamentarians are paying tax as it is deducted from their salaries directly. He said the tax details of all the parliamentarians were also collected by the Election Commission of Pakistan at the time of the elections.

SECURITY SITUATION:

Earlier, the House started a discussion on a motion moved by Mian Raza Rabbani regarding the current political and security situation in the country with particular reference to Balochistan, FATA and Rawalpindi.

During the discussion, Farhatullah Babar said that security establishment must be brought under the oversight of the parliament and structural reforms in this regard should be completed at the earliest. He said better management of the borders is also imperative to control the movement of the miscreants.

Abdul Rauf said that it is the responsibility of the elected representatives of all the political parties to work hard for provision of better security to the masses.

Mushahidullah Khan also that the government is making efforts to improve the law and order situation in the country. He said due to the measures of the government the law and order situation has improved in Karachi and improving in rest of the country.

Khan said that it is first time in history that the government has shown courage to try a dictator. He stated that Pervez Musharraf's case is sub-judice and the court will decide his fate.

Later on, the House started a discussion on a motion moved by Haji Mohammad Adeel regarding the situation arising out of non-shifting of headquarters of the State Bank of Pakistan from Karachi to Islamabad.

Initiating the debate, Haji said that after the creation of Pakistan the capital of the country was in Karachi and as a result headquarters of all the Federal institutions and departments were in Karachi.

He said that after the shifting of the Capital from Karachi to Islamabad, the headquarters of almost all the national institutions were shifted to the new capital. Due to the negligence, the headquarters of the State Bank of Pakistan (SBP) could not be shifted to Islamabad.

He said as a national institution, the SBP should be shifted to the capital to boost the economy of the country.

Colonel Tahir Hussain Mashhadi said that Karachi is the business hub of the country; therefore, headquarters of SBP should not be shifted to the federal capital. – *Courtesy Pakistan Today*

FBR to publish tax directory of MPs

The Federal Board of Revenue has decided to publish a tax directory of the parliamentarians to reveal their tax details, including tax payments. Sources told here on Monday that the Ministry of Finance has directed the FBR to publish a tax directory of the parliamentarians. This is for the first time that tax authorities would publish the details of the tax payments of the parliamentarians. The tax directory would be made public on the FBR official website. – *Courtesy Business Recorder*

Entire team of MCC Gwadar transferred

The Federal Board of Revenue (FBR) has transferred and posted the entire team of customs officials (Grade 17-20) at Gwadar and replaced it with new customs officials including Collector of Customs and Additional Collector of Customs at Model Customs Collectorate (MCC) Gwadar. In this regard, the FBR has issued a notification here on Monday.

According to the notification, Syed Tanveer Ahmad (Pakistan Customs Service/BS-20) has been transferred from Director, Directorate of Reforms and Automation (Customs), Karachi and posted as Collector, Model Customs Collectorate, Gwadar (he will hold additional charge of the post of Director, Directorate of Reforms and Automation (Customs), Karachi; Dr Arslan Subuctageen (Pakistan Customs Service/BS-20) Model Customs

Collectorate, Gwadar to Chief, Federal Board of Revenue (Hq), Islamabad; Ashir Azeem Gil (Pakistan Customs Service/BS-19) from Additional Director, Directorate of Internal Audit (Customs), Karachi to Additional Collector, Model Customs Collectorate, Gwadar; Muhammad Ashfaq (Pakistan Customs Service/BS-19) from Additional Collector, Model Customs Collectorate, Gwadar to Additional Director, Directorate of Training & Research (Customs), Islamabad; Honnak Baloch (Pakistan Customs Service/BS-18) from Deputy Director, Directorate of Post Clearance Audit, Karachi to Deputy Collector, Model Customs Collectorate, Gwadar and Hamid Hussain (Pakistan Customs Service/BS-17) has been transferred from Assistant Collector, Model Customs Collectorate, Gwadar and posted as Assistant Collector, Model Customs Collectorate, Gilgit-Baltistan.

Sources said that the previous team of customs officials headed by Collector of Customs Dr Arslan Subuctageen made record collection and seizures of smuggled goods and narcotics during his tenure. MCC Gwadar has made record tax collection of Rs 8.4 billion during first half (July-December) 2013-14 against assigned target of Rs 3.5 billion, showing enormous growth of 236.47 percent. From July 1 to December 31, MCC Gwadar was able to amass 236.47 percent higher than its overall consolidated target of all taxes together by collecting Rs 8486.58 million against the allocated target of Rs 3588.83 million.

Break-up of tax collection revealed that the customs duty collection stood at Rs 138 million against Rs 177 million, reflecting achievement of 80 percent of the target. Sales tax collection amounted to Rs 6395.02 million against 2780.26 million, showing extraordinary increase of 230 percent. The collection of withholding tax totalled at Rs 1951.58 million against Rs 629.49 million. The collection of the federal excise duty (FED) was Rs 1.27 million against Rs 1.82 million. As against the corresponding period of last fiscal year (2012-13), MCC Gwadar achieved 164.20 percent growth by collecting Rs 8486.58 against last year's collection of Rs 3212.13 million, data added. – *Courtesy Business Recorder*

Data disclosure: FTO recommendation pending action

A key recommendation by Federal Tax Ombudsman (FTO) is pending implementation wherein it was held that any person who, in contravention of section 216 of Income Tax Ordinance, 2001

discloses any particulars of taxpayer's assessment record is guilty of an offence, which is punishable, on conviction, with fine and/or imprisonment.

Sources told that under the newly introduced Federal Ombudsmen Institutional Reforms Act, 2013, FBR is legally obliged to implement the recommendations issued by the FTO after lapse of 60 days, in this regard a letter has been issued by the Adviser (I&M) FTO to the Secretary Revenue Division, Islamabad. As per recommendations issued in a unique case decided by FTO Abdur Rauf Chaudhry, an astonishing case of data theft will be investigated by Cyber Crimes Wing of Federal Investigation Agency and FBR, involving tax officers, who illegally accessed confidential taxpayers' assessment record.

It was a unique case where complainant's assessment record has been accessed by certain FBR officials when they were not charged with conducting any enquiry involving assessment of his income.

When contacted a Lahore based tax lawyer Waheed Shahzad Butt told this correspondent that the provisions of Section 216 the Income Tax Ordinance, cast a statutory responsibility on the FBR to ensure the integrity of a taxpayers assessment record. Maintaining confidentiality of all information contained in the assessment record of taxpayers is responsibility of the concerned office of the FBR where the data is stored/maintained.

In this landmark investigation by the FTO office, leakage of sensitive information from the Complainant's assessment record is evident from the fact that direct references have been made to information borne on the Complainant's income tax returns and wealth statements. This shows that the Dept. has not been able to ensure the integrity of Complainant's assessment record and this lapse not only tantamount to maladministration as defined in Section 2(3) of the FTO Ordinance but illegal access to Complainant's assessment record also constitutes data theft under Section 216 of the Ordinance. Data theft in shape of picking tax record of individuals or act of stealing computer-based information is a severe criminal offence also falls under the category of Cyber Crimes. In order to curb the mal-practice copy of the recommendations issued by the FTO has been forwarded to the National Response Centre for Cyber Crimes (NR3C) wing of FIA for initiating criminal investigation into the matter, as per law.

Sources further stated that the 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 FBR.

The FTO issued recommendations to the FBR to conduct enquiry to determine how and why complainant's assessment record came to be accessed by a number of FBR officials when they were not charged with conducting any enquiry involving him in any manner nor were they involved in the assessment of his income for any Tax Period, devise a foolproof SOP in consultation with the National Response Centre for Cyber Crimes (NR3C) wing of the FIA to protect the confidential data of taxpayers and enforce strict confidentiality of passwords assigned to field officers for purposes of accessing taxpayer's electronic record, the FTO order added. – *Courtesy Business Recorder*

Luxurious vehicles: FBR's targeted action helps recover tax

The Federal Board of Revenue Monday launched a country-wide targeted exercise against big investors in luxury cars and recovered tax from individuals who have made huge investments, but failed to declare their actual income or source of investment in the income tax returns.

Sources told here on Monday that the first phase of the exercise would register those investors of luxurious vehicles, who have never filed their income tax returns. The second phase would focus on recovery of tax from those individual investors, who have filed their returns but made huge concealment of income. The FBR has noted that huge investment has been made in luxury vehicles during the last few years. However, investors have not disclosed their details of investment for the tax purposes.

Details revealed that the FBR has initiated a targeted exercise to tax individuals who have made huge investments in various sectors in the recent past. The task of investigating and detecting such investments in luxury cars, real estate and other sectors has been assigned to the Directorate of Intelligence & Investigation-IR, the intelligence arm of the FBR.

In this connection, the Directorate General Intelligence & Investigation-IR has already collected and processed crucial data related to the purchase of luxury cars in the past three-four years. The data is now being utilised to reach the real quantum of income in these cases and tax it accordingly. In the first phase, the Directorate General is pursuing the cases of those luxury car

owners who have not filed their tax returns despite making such huge investments. It is pertinent to mention that under the income tax laws, a person possessing a vehicle is obligated to file tax return regardless of whether any income is earned or not. The Directorate General has already started issuing notices in such cases. In the second phase, the Directorate General will initiate action in the cases of those investors who have filed their tax returns but their declared income is not proportionate to the investments made in the luxury cars.

Sources further stated that the whole exercise is being pursued in a non-discriminate manner and the FBR intends to take across the board action in the detected cases. The exercise is part of the FBR plan to dispel the impression that tax burden in the country is generally carried by the middle and low income groups whereas individuals with huge consumption and investment either remain outside the tax net or pay only meagre tax. Action against the investors of luxury vehicles is part of the larger plan to detect and tax investment in other sectors of the economy also. It has been learnt that the Intelligence Wing of the FBR has also collected discreet information about investments in large real estate projects and action in the cases of investors will be launched shortly. In this connection, the field offices of the Directorate General of Intelligence & Investigation-IR have received special instructions, sources added. – *Courtesy Business Recorder*

Wooden products to China: FBR likely to allow export of detained consignment

The Federal Board of Revenue (FBR) is likely to allow export of a consignment containing finished wood products to China, as the consignment has been detained by customs department in Karachi under Export Policy Order-2013. In this regard, the FBR has issued instructions to the Model Customs Collectorate of Export Karachi and MCC Port Qasim on Monday and sought comments on the request of the Climate Change Division for allowing export of the said consignment.

According to the FBR's instructions, the Collector of Customs should submit its comments on priority basis on the 'export of sawn wood parts of portable polished outdoor barbecue wooden tables'. Climate Change Division has asked the FBR that M/s Trading Constellation (Pvt) Limited has approached the division with the request to convey to the Customs Authorities who are

holding an export consignment of furniture tables on the pretext that the timber and wood are included in Schedule-I of the Export Policy of 2013.

Climate Change Division has further informed the FBR that attention is invited to Chapter 94 of Pakistan Customs Tariff under which manufactured wooden products are allowed for export. Attention is also invited to the figures provided by the Pakistan Bureau of Statistics in which Pakistan has earned huge foreign exchange during financial year 2012-13.

In view of above, Customs Authorities may be instructed to facilitate the export of finished wood products in the public interest, Climate Change Division added. The company had informed the Climate Change Division that it has inked an agreement with a Chinese company, to manufacture and export of the subject tables. As the tables are meant to be installed in open air it needs to be in as natural form as it could be and does not need to be in ultra finished shape, however according to the agreement these are needed to be glossy polished as required by the importer in China.

In pursuance of the agreement with Chinese importer, the company has manufactured first lot of 150 tables from which two containers having 50 tables each are lying at Port Qasim Karachi with the custom authorities and another container having 50 tables too is on its way to Karachi.

The unit was of the view that the custom authorities at Karachi are mistakenly considering the goods as raw timber export, which is prohibited in Pakistan, whereas the company according to the requirement of importer in China, have manufactured the subject goods in Multan by crafting it from Sawan wood and after finishing the parts have polished the same with high grade polish and each part is also packed in corrugated sheet having unique number showing its part number on it for perusal of custom authorities.

Needful to mention here that against the subject export the company is earning substantial foreign exchange in US dollars and have already received in advance the sale price of goods @ 26000 US dollars for each container of 50 tables from its importer in China through legal banking channel of Pakistan. Such exports we believe help Pakistan in balancing the trade deficit between the countries and helps Pak rupees to stabilise in international market, it added. It is, therefore, requested that the said export

may be allowed and future export of such items by the company may be ordered to be supported and cleared on priority basis by the customs authorities, the company added. – *Courtesy Business Recorder*

FBR seeks review of judgment on fuel levy

The Federal Board of Revenue (FBR) has filed a petition before the Supreme Court, seeking review of its Dec 10 verdict against the PML-N government's move to validate the collection of general sales tax (GST) on petroleum products and compressed natural gas (CNG) since July 1, 2007.

A bench headed by former chief justice Iftikhar Muhammad Chaudhry had struck down Section 3(8) of the General Sales Act, 1990, inserted by the government through the Finance Act of 2013 for protecting the sales tax collected since 2007 under the Sales Tax (Special Procedure) Rules, 2007.

The court had ruled that a nine per cent additional tax on the CNG should not be charged except for the rate fixed under Section 3(1) of the Sales Tax Act. It had ordered the Oil and Gas Regulatory Authority to issue a revised notification and recover 16pc sales tax already paid by the consumers within three months.

The FBR filed the review petition through Advocate Malik Shakeelur Rehman Khan, pleading to revisit the verdict. The petition was taken up on Tuesday by a three-judge bench headed by Justice Jawwad S. Khawaja that decided to consider the issues involved next week.

The petition argued that in no part of the verdict had the court given any reason explaining how Section 3(8) was contrary to the law and the constitution. It said the provision of any statute could not be struck down without referring to a particular article of the constitution.

The petition said the verdict appeared to be based on a presumption that the 9pc levy purportedly was an additional tax. The judgment failed to consider the explanation to the section and therefore should be reconsidered.

It said the court had annulled the vires of Section 3(8) of the act merely on the ground that a June 21, 2013, directive of the court had not been complied with. – *Courtesy Dawn.com*

Return form for amnesty scheme notified

The Federal Board of Revenue has notified rules for filing of income tax returns for availing the amnesty scheme announced by the government last month.

A general order issued here has notified a specific form IT-6 for the filing of returns for the past five years (2008-2013) electronically.

The form is available on the FBR website.

It further said that filing of return electronically is mandatory for all association of persons, sales tax registered persons, refund claimants and salaried persons having annual income of Rs500,000 or more. However, all others are encouraged to file the returns electronically.

The immunity from penalties, default surcharge and audit will be available only to those individuals who will file their returns latest by February 28, 2014.

The tax can be paid in all authorised branches of National Bank of Pakistan and State Bank of Pakistan even before filing of the return. – *Courtesy Dawn.com*

Special procedure for ST registration to be amended

The Federal Board of Revenue has proposed comprehensive amendments to the special procedure for sales tax registration to do away with existing faulty/defective system, lacking proper physical verification of the declared business premises of the applicants seeking Sales Tax Registration Numbers (STRNs). Sources told on Monday that the new sales tax registration procedure would be notified after vetting from the Law and Justice Division.

Instead of issuing a new system, the existing special procedure for sales tax registration would be amended. The FBR would ensure to notify the amended procedure in January 2014. Under the sales tax law, manufacturers, retailers, importers, wholesalers, distributors and commercial exporters are liable to registration. The existing registration system is not a risk-based system, with faulty verification mechanism. Description of goods and HS Codes are not available for sectoral analysis, profiling and checking misuse of invoices. Registration data does not help in risk-based analysis of returns.

In the FBR administrative plan, a two-pronged strategy for registration in sales tax has been developed. It consists of cleansing of existing database and a risk-based system for new registrations. Under the cleansing exercise, premises shall be verified through GPS enabled devices using application with business activity code. There will be online interface for updating missing information like HS Code, utility connection number, etc. Under the new system, application received shall be processed according to the risk parameters which have already been developed on the basis of declaration risks and third party risks. In case of low risk, registration shall be allowed merely upon GSM verification. For medium and high risk cases, registration shall be allowed after verification of documents and GSM verification. The declared capital information shall be used for controlling fake invoices. The system, having linkages with WeBOC and Expeditious Refund System (ERS) shall provide a centralised single source of information managed through a unified database, and will help in correct return analysis and elimination of invoice misuse, sources said.

The benefits of new system also included strong documents after scanning into the database and making available for post registration audit; decentralising the approval mechanism at commissioner's level for speedy processing; correct description of goods will help revenue analysis, accurate forecasting estimates and budget analysis, eliminate invoice misuse by irrelevant sectors; control over the invoices issued by a registered person based on the declared capital, sources added. – *Courtesy Business Recorder*

T-6 form for TY 2008-12: FBR facilitates new taxpayers for Prime Minister's scheme

The Federal Board of Revenue has allowed new taxpayers to file income tax returns manually in cases where they would file Income Tax Return Form IT-6 for Tax Years 2008-12 under SRO.1065(I)/2013 for implementation of Prime Minister's Incentive Scheme. The FBR has issued general instructions to all taxpayers here on Monday for Tax Year 2008-12 for filing of their income tax returns under SRO.1065(I)/2013.

According to FBR, for further facilitation of taxpayers, following modes of submitting the returns/statements are offered: electronic filing at e-FBR portal (<https://e.fbr.gov.pk>); submitting paper

return at Taxpayer Facilitation Counter of the respective Regional Tax Office and the paper return form can be downloaded from FBR website by visiting <https://fbr.gov.pk>. The FBR said filing of returns electronically is mandatory for all AoPs, sales tax registered persons, refund claimants and salaried persons having annual income of Rs 500,000 or more. However, all others are encouraged to file the returns electronically.

The Federal Board of Revenue has issued guidelines for new taxpayers, who intend to file income tax returns (Income Tax Return Form IT-6 for Tax Years 2008-12) under SRO.1065(I)/2013 for implementation of Prime Minister's Incentive Scheme. According to the FBR, in compliance with SRO.1065(I)/2013 dated December 20, 2013 for implementation of Prime Minister's Incentive Scheme, Income Tax Return Form IT-6 for Tax Years 2008 to 2012 has been deployed for its submission electronically through e-FBR Portal by using the specified URL.

As per the SRO, the immunity from penalties, default surcharge and audit would be available to an individual, holding an NTN who files a return, as specified in Form "A" (IT-6) by February 28, 2014, of the tax years from 2008 to 2012, for which returns have not been filed. Provided that for each of the tax year, a minimum tax of Rs 20,000 on the basis of taxable income is paid by the taxpayer. The taxpayer shall not be entitled to claim any adjustment of withholding tax collected or deducted under the Income Tax Ordinance. The due date for filing of return for tax year 2013, in respect of individuals availing concessions under this clause, shall be February 28, 2014, the FBR said.

In case of business individuals for Tax Year 2012, the FBR has notified that the rate of tax as specified in column (3), against serial no 2 in clause (1), in Division I of the Part I of First Schedule of the Income Tax Ordinance, shall be reduced to 5 percent, for taxable income declared in the return for tax year 2012, filed under clause (87) or (88) of the Part IV of this Schedule ie where the taxable income exceeds Rs 350,000 and does not exceed Rs 500,000 the rate of tax will be 5 percent instead of 7.5 percent for Tax Year 2012, FBR maintained.

If salary income is more than business income then salary rates will be applied. In case a taxpayer has already submitted his return for a particular year, then IT-6 will not be available to him for that year. The FBR said that if a taxpayer has already submitted his IT-6 Return even then he can submit his IT-2

Return for that particular year, ie, the facility of submission of IT-2 will be available after submission of IT-6, but the option to submit IT-6 after submission of IT-2 will not be available.

8. The taxpayers can seek guidance through following modes:

a. 24-Hrs Helpline 051 111-772-772

b. Office Hours Helpline 0800 0227, 051 111-227-227

c. By visiting the nearest Taxpayer Facilitation Centre (TFC), list of TFCs can be downloaded from FBR website at <https://fbr.gov.pk> The FBR added that tax can be paid in all authorised branches of NBP and SBP even before filing of return forms. List of the TFCs/RTOs and authorised branches of NBP/SBP can be downloaded from the FBR website. – *Courtesy Business Recorder*

MPs to be issued NTN on basis of CNIC data with ECP: FBR

To facilitate parliamentarians, the Federal Board of Revenue will issue National Tax Numbers (NTNs) to all Members of National/Provincial Assemblies on the basis of their Computerised National Identity Cards (CNICs) numbers available with the Election Commission of Pakistan (ECP).

Sources told here on Tuesday that the FBR will allocate NTNs to the parliamentarians taking into account nomination papers filed by the contesting candidates for Elections-2013 with the ECP. Out of nomination papers, the FBR has collected the CNICs of all the winning candidates of Election-2013. The FBR will differentiate between the non-NTN holders and NTN holders. A separate list of non-NTN holder parliamentarians would be finalised. On the basis of CNICs, the FBR will allocate the NTNs to the non-NTN holder parliamentarians and deliver the same to them for becoming compliant taxpayers.

During the whole exercise, the parliamentarians may not voluntarily come forward and inform the FBR about their NTN status. At the same time, the process of filling of NTN forms may not be adopted by the parliamentarians. The FBR will itself complete the whole process and issue the NTNs to parliamentarians to facilitate them, sources said.

Following the directions of Finance Minister Ishaq Dar, the FBR will ensure issuance of NTNs to all the parliamentarians by end of current month. In the past, on the request of the Senate Standing

Committee on Finance, the FBR had decided to establish a cell or office at the Parliament House to assist parliamentarians in obtaining NTN's and filing of income tax returns. The members of the committee had asked the FBR chairman to set up offices in the parliament and provincial assemblies to issue NTN's to them. At that time, the parliament secretariat had not provided any place to the FBR for setting up "Special Advisory Desk" to assist parliamentarians, including Members of National Assembly and Senate in obtaining NTN's.

The FBR had also contacted the secretariat for deputation of tax officials for assisting the parliamentarians in obtaining NTN's or discharging their tax liabilities. The Board had deputed senior tax officials to assist parliamentarians in discharging their tax liabilities, including filing of income tax returns. In this connection, the FBR had finalised the arrangements for setting up office at the Parliament House and waited for the response of the parliament secretariat, sources added. – *Courtesy Business Recorder*

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 to 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*

Exports to be allowed through Ghulam Khan checkpost

The federal government has decided in principle to allow export of Pakistani goods, except cement, through the Ghulam Khan checkpost and the traders would also be allowed to carry out transaction in the US dollar in place of the Pakistan rupee.

This was told by President of the Khyber Pakhtunkhwa Chamber of Commerce and Industry (KPCCI), Zahidullah Shinwari, who called on Federal Minister Finance Muhammad Ishaq Dar at meeting in Islamabad on Thursday.

The meeting was also attended by Secretary for Finance Dr Masud Khan, Federal Commerce Secretary Qasim Niaz, State Bank of Pakistan Governor Yasin Anwar, Chairman of Federal Board of Revenue (FBR) Tariq Bajwa and member of Customs Nisar Khan. Zahid Shinwari told The News he briefed the finance minister, besides other problems being faced by the traders and business community in Khyber Pakhtunkhwa, on the impediments to the implementation of the Afghanistan Pakistan Transit Trade Agreement (APTTA).

He said the finance minister assured that cigarettes and auto parts would be removed from the APTTA negative list and exports of Pakistani goods, except cement, would be allowed through the Ghulam Khan checkpost. Soon notifications would be issued to this effect, Zahid Shinwari quoted Finance Minister Ishaq Dar as informing the meeting.

He said that the minister also agreed to his (Shinwari) proposal that Pakistani exporters should be given 60 days to complete their transaction and those cigarettes and auto parts would be removed from the APTTA negative list. The exporters would also be allowed to carry out their transaction in American currency. Zahid Shinwari also said federal secretary for commerce and FBR chairman would visit the KPCCI in the third week of the current month. – *Courtesy International The News*

Govt ends Pak-Afghan trade in rupee

In an apparent move to support foreign exchange reserves, Pakistan on Thursday decided to stop trade with Afghanistan in rupee and discourage persons going abroad from taking out foreign exchange in cash.

The decisions were taken at two back-to-back meetings, presided over by Finance Minister Ishaq Dar and heads of State Bank of Pakistan, Federal Board of Revenue, Secretaries of Commerce and Finance.

Rana Assad Amin, a finance ministry spokesman and adviser, told Dawn that there were reports that unscrupulous elements were taking out foreign currency in bulk, taking advantage of central banks' lenient view.

The governor of State Bank, Dr Yasin Anwar, told the meeting that the present limit of \$10,000 for each person per trip abroad was being misused and believed that the limit be reduced by half to \$5000 per person per visit.

Rana said it was felt that genuine travelers never took out such a huge amount of foreign exchange in cash and instead preferred credit cards and foreign exchange bearer certificates because of the risk factor.

This meant people related to currency business might be involved in pilferage of foreign exchange.

It was, therefore, decided to impose a limit of \$5,000 or equivalent in other currencies per person per trip who wanted to carry currency notes.

At the same time, each child up to 12 years of age would be entitled to 50 per cent allowance while an infant would be permitted an allowance of 25pc.

“Every civilised nation had its own foreign currency exchange control regime that is adjusted according to changing situation and Pakistan is no exception,” he said.

Rana said Pakistan had allowed trade with Afghanistan in Pakistani currency in 2001-02 when there were no banking facilities.

Now it had been felt that enough time had passed since then and both the countries have established banking channels, therefore, there was a need to introduce normal trading arrangements as is the case with the rest of the world.

He said the head of Khyber Pakhtunkhwa Chamber of Commerce and Industry Zahidullah Shinwari was also consulted on the issue who reported that they had in fact proposed to the government to shift to the normal trading system in foreign exchange.

The meeting was informed that Pakistan's export to Afghanistan during 2012-13 amounted to \$2.3bn but half of this trade took place in rupee.

After consultations with the relevant ministries, the finance minister decided that payments against exports to Afghanistan would no longer be in rupee and the normal trading regime would apply from Mar 17.

A two-month period was, however, allowed to exports to complete their transactions already in the pipeline.

The KCCI president drew the attention of the finance minister to difficulties being faced by exporters to utilise the route of Ghulam Khan as it was restricted for export of cement only.

He suggested that other items should also be allowed to be exported through Ghulam Khan route.

On being supported by the FBR chairman and the ministry of commerce, the finance minister decided to allow export of all exportable items also from Ghulam Khan, saying this would help develop business in the backward areas of KPK and also stimulate growth of exports to Afghanistan.

The relevant ministries were directed to immediately take steps for implementation of the decisions through necessary amendments in the procedures.

The minister said the decision was expected to earn foreign exchange of \$1bn, raise exports to Afghanistan, benefit businesses as well as the people of Khyber Pakhtunkhwa and reflect actual export figures of the country. – *Courtesy Dawn.com*

Beverage makers: FBR to fix net rate of FED/ST per spout

The Federal Board of Revenue has decided to fix net rate of federal excise duty/sales tax per valve/spout (filler machines) of beverage manufacturers under the capacity tax regime to overcome massive shortfall from the beverage industry in remaining months of 2013-14. Sources told here on Thursday that the beverage manufacturers would not be entitled to input tax adjustment or refunds under the revised capacity tax regime.

The FBR has proposed Rs 0.225 million per spout per month (factories with imported filler machines or mix of imported and local filler machines); Rs 0.175 million per spout per month (factories with exclusively local filler machines) and Rs 0.05 million per spout per month (factories having less than 40 spouts).

The FBR has moved a proposal to the Finance Minister for approval. The FBR will amend the capacity tax rules through issuance of a notification following approval of the Finance Minister, sources added. Details of the issue revealed that on the request of major manufacturers of aerated waters, and their assurance/commitment to enhance the revenue paid by the industry by 25 percent over the previous year, the mode of collection of sales tax and Federal Excise Duty (FED) was changed to capacity-based taxation vide SRO 649/2013 with effect from July 9, 2013. As per provisions of this S.R.O. the beverage industry was required to pay sales tax/FED on the basis of the number of spouts/valves installed in each factory, as per rates and schedule provided in the said notification. The factories having only foreign origin filling machines or a mix of foreign and local origin filling machines, whether used for manufacturing foreign or local brands, the rate of tax per filling value or spout is Rs 4,700,000; factories exclusively having local origin filling machines, whether used for manufacturing foreign or local brands, rate of tax per filling value or spout is Rs 3,760,000 and factories where the total number of filling machines or spouts installed are less than 40, rate of tax per filling value or spout is Rs 1,175,000.

Sources said that the FBR has been monitoring the performance of capacity regime since July 2013, and has found that it has resulted in a sizable decline in duty and tax collection by the government from the industry. The major reasons for such decline have been analysed and found to be as follows: By indicating a higher number of filling valves/spouts than actually installed, the industry managed to get the rate per valve fixed at a lower level and some of the manufacturers started claiming excessive input tax adjustments, in contrast to the earlier assurances given in this regard.

Firstly, there is a sizable decrease in growth of taxes. Against the targeted figure of Rs 7.7 billion for the year, the industry is projected to pay only Rs 1.6 billion till December 2013, which is just 21 percent of the targeted figure. Secondly, there is an unprecedented increase in input tax adjustments of 24 percent, creating refunds in some cases.

Thirdly, there is substantial reduction in the growth of FED payment by one of the concentrate sellers. Fourthly, there has been a reduction in the number of spouts brought into the system. Fifthly, some of the bottlers have gone into litigation, and have obtained stay from the Lahore High Court against working under the notification.

The prices of aerated waters have been increased by 22-28 percent, but the government is not getting any additional revenue on the enhanced prices because the rates were fixed on per spout basis. In order to address loopholes in the system and to ensure that the required growth in net taxes paid by the industry, several meetings were held with the industry representative since early November, 2013. In these meetings it was impressed upon the industry to fulfil their commitment of 25 percent growth in revenue, sources said.

In order to make up the shortfall in revenue, the calculations suggest that either the rate of tax per spout has to be enhanced or the industry should revert back to the normal mode of collection. Accordingly, the industry was informed about the current situation and was offered the following options:

OPTION 1: Fixation of net rate of duty/tax per valve (without input tax adjustment). The proposed net rate per spout was as follows:

Rs 0.225 million per spout per month (factories with imported filler machines or mix of imported and local filler machines); Rs 0.175 million per spout per month (factories with exclusively local filler machines) and Rs 0.05 million per spout per month (factories having less than 40 spouts).

OPTION 2: Enhancement of gross rate of duty/tax per valve, with restriction on claiming input tax adjustment over 75 percent of output taxes. Proposed gross rate per spout was as follows: Rs 0.9 million per spout per month (factories with imported filler machines, or mix of imported and local filler machines); Rs 0.7 million per spout per month (factories with exclusively local filler machines) and Rs 0.2 million per spout per month (factories having less than 40 spouts).

OPTION 3: Reversion to the normal FED and sales tax regime as existed on July 1, 2013 (with 9 percent FED and 17 percent Sales Tax on the printed retail price). After prolonged discussions, the emergent situation is that although both leading bottlers desire continuation of the capacity regime, there is no consensus on the

policy options. One top beverage company want to pursue Option 1 but with reduced rate of Rs 0.175 million per spout per month, whereas second bottler want to adopt Option 2, with some adjustments in rates and other changes. Despite all efforts, the bottlers of the two major companies could not arrive at a mutually agreeable position due to serious disputes among them.

As of now, both these groups of bottlers are enjoying substantial benefits, including exemption from audit and the requirement to print retail price and amount of tax on the bottles. Since prices of soft drinks have been enhanced, the bottlers are recovering the full amount from the general public but are only paying a fraction of it as tax to the national exchequer. The revenue loss as compared to the old regime is estimated to be around Rs 3 billion till December 31, 2013. In view of the above scenario, the FBR would enforce option-1 for the remaining part of the financial year by fixing net rate of federal excise duty/sales tax per valve/spout installed at factories, they added. – *Courtesy Business Recorder*

Bullish bourses Pasha sees Rs 100 billion CGT potential

Renowned economist Dr Hafiz A Pasha has estimated around Rs 100 billion as potential of Capital Gains Tax (CGT) from bullish stock exchanges and asked the Federal Board of Revenue (FBR) to take appropriate measures for exploiting full potential of taxes from capital market in Pakistan.

Top economist has given viable proposals to FBR during a day-long workshop on “Study to design the revamped/reformed FBR strategy,” organised by the FBR on Thursday. It was an internal workshop of the FBR to prepare a strategy paper containing tax policy measures to raise tax-to-GDP ratio up to 15 percent.

According to sources, the viable suggestions of Dr Hafiz A Pasha would be incorporated in the next federal budget for improving tax policy of the country, resulting in expanding the tax-base and increasing overall revenue collection. Tax policy proposals of the top economist were appreciated by the FBR’s team of tax managers headed by FBR Chairman Tariq Bajwa.

During the presentation of Dr Hafiz A Pasha, he presented his working on the CGT and proposed that the FBR can generate Rs 100 billion as tax from the stock exchanges in view of current bluish trend at the bourses. The ongoing positive trend in stock exchange should also be reflected in the tax payments. In India,

tax authorities are getting Rs 150 billion from stock exchanges. On the other hand, the CGT collection from stock exchanges is around Rs 1.2 billion whereas the actual potential is around Rs 100 billion in Pakistan.

Renowned economist also proposed imposition of the regulatory duty (RD) on the import of non-essential items or luxury goods. Except essential commodities, the non-essential items be subjected to the RD to curtail the import of such items. He further proposed the FBR to take away unnecessary concessions and reduction in taxes granted to the automobile sector. Car manufactures are earning huge profits due to such tax concessions which need to be checked through effective tax policy.

He proposed that the exemption notifications and statutory regulatory orders (SROs) be rescinded to provide level plying field to all businesses and remove distortions in the tax regime. Dr Hafiz A Pasha also talked about effective audit, integration of taxes and other policy and administrative measures to improve overall taxation system in the country. The proposals relating to tax policy and administration, aiming at increasing tax to GDP ratio to 15% in next 5 years would be formulated by the FBR for incorporation in the strategy paper.

It has been decided that the FBR will convene more internal workshops to finalise strategy paper to raise tax-to-GDP ratio. 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, sources added. – *Courtesy Business Recorder*

Revenue leakage: Ship breakers, gold importers face action

The Federal Board of Revenue (FBR) has decided to tighten noose around ship breakers, gold importers and others to plug revenue leakage. The decision was made by Syed Ijaz Hussain Director General, Intelligence and Investigation (I&I), Inland Revenue (IR) during recent visit to Karachi, sources said here on Thursday.

They said the DG I&I had convened a meeting with the officials of Inland Revenue and directed them to expedite the process of tax recovery besides taking appropriate measures to plug revenue leakage. Sources said that DG Ijaz Hussain had ordered field formations to take action against tax evaders in ship breaking industry and gold import.

They said field formations had also been tasked to deal with non-taxpayers, having luxury vehicles and bogus refund claimants with an iron hand. Replying to a question, sources said the I&I, IR, Karachi had so far gone hammer and tongs against unscrupulous elements and remained successful in establishing deterrence.

Sources said investigation in a fake refund case had been initiated by I&I-IR Karachi in April 2012 and since then, the department had identified a colossal revenue loss of Rs 4 billion. They said the department had not only recovered around Rs 2 billion in this case but also averted further revenue loss by blocking fake refunds amounting to Rs 2.7 billion.

Consequently, officials from all three Regional Tax Offices (RTOs) at a meeting with DG I&I-IR avowed that measures taken by I&I-IR, Karachi would ensure upsurge in its revenue collection. The official figures presented by all the three RTOs at a meeting revealed that RTO-I, Karachi has shown 9389 percent growth in its revenue collection.

RTO-I has accumulated Rs 3.047 billion during first quarter of current fiscal year as compared to Rs 32.12 million collected in the corresponding period last year. Similarly, RTO-II has registered 350.94 percent growth generating Rs 5.116 billion against Rs 1.134 billion in previous period. The revenue collection of RTO-III has also increased by 191 percent as it has succeeded in generating Rs 2.81 billion as compared to last Rs 966.56 million. – *Courtesy Business Recorder*

Lower ST payments: FBR initiates probe against tea sector

The Federal Board of Revenue has started investigation against the tea sector to ascertain reasons for not showing substantial increase in sales tax payments in 2013-14, after withdrawal of concessionary rate of 5 percent sales tax on the commodity and imposing standard rate of 17 percent sales tax.

Sources told here on Thursday that the FBR had notified lower rate of 5 percent sales tax on import and supply of black tea through SRO.608(I)/2012 dated June 01, 2012. According to the notification, Federal Government had specified that sales tax shall be charged at the lower rate of five percent on import and supply of black tea. In 2012, sales tax was reduced on tea from 16 to 5 percent as a measure to check smuggling of the commodity.

Later, the Board in March 2013 had imposed the standard rate of sales tax on the import of tea and issued a notification in this regard. The Board had withdrawn the concessionary rate of 5 percent sales tax on tea and imposed standard rate of sales tax on the commodity. The FBR had taken the plea that tea manufacturers failed to pass on the benefit of major reduction in sales tax to consumers during the last six months of 2012-13. The second commitment made by tea industry was that smuggling would be controlled due to reduced rate of sales tax. However, smuggling of tea continues despite applicability of lower rate of sales tax in 2012-13. The legal import of the commodity was also not increased during the last six months of 2012-13.

According to the sources, the FBR was expecting 300 percent increase in sales tax payment due to increase in sales tax from 5 percent to 17 percent. Three times increase in rate of sales tax should have resulted in 300 percent increase in sales tax contribution by the tea sector. However, the tea sector has not contributed 300 percent increase as far as sales tax payments are concerned during first half (July-December) of 2013-14. Contrary to this, the FBR had witnessed increase of 20-25 percent in sales tax from tea manufacturers. The FBR is ascertaining the reasons behind such sales tax payments before taking some enforcement action against the said sector, sources added. – *Courtesy Business Recorder*

Govt should publicise tax evaders directory: KCCI

Karachi Chamber of Commerce and Industry (KCCI) President Abdullah Zaki has said that instead of issuing a tax directory of existing taxpayers, the government should publicise those tax evaders whose details have already been acquired by the Federal Board of Revenue (FBR) from banks and National Database Registration Authority (NADRA).

In a statement, President KCCI expressed deep concern over Finance Minister Ishaq Dar's directives to Federal Board of Revenue to issue a tax directory of more than 850,000 existing taxpayers including members of the parliament and provincial assemblies, which is highly unfair as these taxpayers are already holding NTN numbers and have been fully documented by the FBR.

On the other hand, the tax evaders, who are living luxurious lives, frequently flying abroad, and maintaining enormous properties

along with sizeable bank accounts are deliberately being ignored, Abdullah noted, adding that instead of issuing a tax directory of existing taxpayers, the government must publicise the tax evaders by disclosing their names and photos. He was of the view that publishing this futile tax directory of existing taxpayers will only provide opportunities to criminals who can easily assess the financial strength of various taxpayers and will obviously threaten them to pay extortion money. "It will intensify problems for the business community and I urge the authorities to refrain from publishing this confidential information and focus on taking the tax evaders into the net", he added. – *Courtesy The Nation*

FBR launches crackdown against 153 units

The Federal Board of Revenue (FBR) has launched crackdown against 153 units involved in Rs9 billion sales tax refund scam, official sources said on Thursday.

"The Regional Tax Offices (RTOs) Karachi have either suspended / blacklisted the firms or issued show-cause notices," an official of the revenue body said on the condition of anonymity.

The RTO-II Karachi unearthed the scam of refund issuance of around Rs9 billion on fake invoices, involving a major company and other 153 firms for assisting in obtaining the refunds on fake invoices during the period September 2009 and October 2012.

The officials said that the RTOs had accelerated the process of blacklisting for presenting the report before the FBR chairman who is scheduled to visit Karachi on January 15.

The officials said that during his visit, the FBR chairman will issue directives for the recovery of the amount and legal actions against culprits and against the FBR officials for deliberate delay.

The officials said that the RTO-II Karachi will lodge FIR against the firms for fake / flying invoices; followed by arrests.

Some senior tax officials will again try to give cover to the culprits by using delaying tactics such as the culprits are untraceable, the officials said.

Tax experts said that tracing a person, who is registered for sales tax, is easy on the basis of available documents that are mandatory for obtaining the sales tax registration number.

The documents included CNIC of the applicant; rent agreement or ownership lease; NTN certificate; bank account certificate; gas or

electricity bill; and the list of machinery (if applied for as manufacturers) and snaps.

The experts said that in case these documents found fake or false, then the FBR official, who certified / approved after physical verification, should be punished.

In such fraud cases, the FBR officials usually give lame excuses of failure to detect the person, the experts said.

Even if all the things found beyond reach, then the tax authorities can trace a person through internet protocol from where the sales tax return was filed, they said.

In the case of Rs9 billion fraud, the companies had regularly filed their sales tax returns through electronic mode for about three years. Therefore, with the help of the Internet Service Providers, the FBR can locate the place from where the returns were filed.

At present, the RTO-II is deliberating to contact the banks for obtaining the details of transactions made by those companies, another FBR official said. – *Courtesy International The News*

FBR hires 3,542 buildings paying Rs370m rent

The Federal Board of Revenue (FBR) has hired a total of 3,542 buildings for the accommodation of its employees across Pakistan and pays rent amounting to Rs369,653,679 the Senate was informed Wednesday.

Finance Minister Ishaq Dar, during the question hour, told the House in written replies that the rent was being paid as per rental ceilings notified by the Ministry of Housing and Works. He was replying to a question by JUI-Fazl Senator Talha Mehmood.

Giving the break-up of buildings in provinces and rent being paid, the minister explained that as many as 2030 buildings had been hired in Punjab, including the Federal Capital and Rs206,387,601 rent was being paid while 1109 buildings have been hired in Sindh and Rs. 106,995,819 rent paid.

The minister said that 213 buildings were hired for employees in Khyber Pakhtunkhwa and Rs44,171,435 rent being paid for these accommodations. Moreover, in Balochistan, the FBR had hired 181 buildings and Rs. 12,098,824 rent being paid.

To another question by Senator Talha, the minister said that 98 buildings had been hired for office accommodation of the department. He added these included 76 buildings in Punjab and

the federal capital at monthly rent of Rs8,114,865, 5 buildings in Sindh at rent of Rs2,925,397, 12 in KP at monthly rent of Rs333,710, 4 buildings in Balochistan at last chance to the channel and the anchor to file their reply and adjourned the hearing till February 6.

The court set aside two contempt of court applications moved by Jang Group's lawyers, Mohsin Akhter Kayani and Faisal Iqbal, remarking that it had already been hearing a contempt application and had notices for reply. Jang Group's lawyers stated that neither the respondents had filed their reply nor stopped their negative propaganda, and requested the court to proceed against them at which the court gave last chance to the respondents. – *Courtesy International The News*

Issuance of NTN: FBR seeks copies of CNICs of MPs

The Federal Board of Revenue (FBR) on Friday asked the National Assembly and Senate Secretariat along with all the four provincial assemblies to provide a list of Parliamentarians including their Computerised National Identify Card Numbers (CNICs) or National Tax Numbers (NTNs) - for allocating NTNs to non-NTN holders by January 31, 2014.

Sources told here on Friday that the FBR has written separate letters to National Assembly Secretariat, Senate Secretariat and all four provincial assemblies to obtain lists of Members of Assembly/Senate. The FBR has also referred to the deadline given by Finance Minister to the tax authorities for the issuance of NTNs to all parliamentarians by January 31, 2014. In its communications to the National Assembly/Senate Secretariat and all provincial assemblies, the FBR has shown its commitment to ensure allocation of NTNs to all non-NTN holder parliamentarians.

According to sources, at the same time the FBR is trying to allocate NTNs to Parliamentarians taking into account the nomination papers filed by the contesting candidates for elections-2013 with the Election Commission of Pakistan (ECP). Out of nomination papers, the FBR has collected the CNICs of all the winning candidates of general election-2013.

The FBR will differentiate between the non-NTN holders and NTN holders. A separate list of non-NTN holder parliamentarians would be finalised. On the basis of CNICs, the FBR will allocate

the NTNs to non-NTN holder parliamentarians and deliver the same to them for becoming compliant taxpayers. Following the directions of Finance Minister Ishaq Dar, the FBR will ensure issuance of NTNs to all the parliamentarians by the end of current month. – *Courtesy Business Recorder*

Stakeholders' views taken: Banks, FIs to comply with FATCA

A meeting was recently held on the Foreign Accounts Tax Compliance Act (FATCA) of United States at the Finance Division to discuss the requirement of the Pakistani financial institutions and banks to comply with the FATCA during 2014. Sources told on Friday that the FATCA was signed into US law on March 18, 2010 and was aimed at discouraging tax evasion by the US nationals and residents besides capturing information regarding their total taxable income.

Recently a meeting was held at the Finance Division to obtain the viewpoint of stakeholders including Federal Board of Revenue (FBR), banks, Securities and Exchange Commission of Pakistan (SECP) and Law and Justice Division on the FATCA. The salient features/requirements of FATCA are: Foreign Financial Institutions (FFIs) need to enter into an agreement with the Internal Revenue Service (IRS), US tax authority and become participating FFIs.

The potential implications could be 30 per cent withholding tax on US source fixed determinable annual and periodic income; gross proceeds from the sale of US securities and interest bearing instruments; withholding on pass through transactions. All participating FFIs would need to identify and document information on US accounts maintained with the FFI by US persons or US owned entities. Another requirement of FATCA is to report certain information on the identified US accounts (name, address, account number, Tax Identification Number-TIN, account balance, income and the gross proceeds) and the Recalcitrant accounts (aggregate number and value of accounts) to the IRS, on an annual basis (limited reporting to initiate from March 31, 2015 covering calendar years 2013 and 2014).

A key feature of the FATCA is to withhold 30 percent tax on withhold-able payments (US source income and gross proceeds from the sale of property) and any foreign pass-through payments made to Non-participating FFIs. Sources said that the government

is looking into the modalities of possibility of signing a bilateral treaty ie Inter Governmental Agreements (IGAs) with United States for implementation of the Foreign Accounts Tax Compliance Act (FATCA) for Pakistani financial institutions/banks. Ministry of Finance, State Bank of Pakistan (SBP), Securities and Exchange Commission of Pakistan (SECP), Federal Board of Revenue (FBR), Ministry of Foreign Affairs and Ministry of Law and Justice are co-ordinating for finalising the methodology to meet the requirements of the FATCA.

Details revealed that the Foreign Accounts Tax Compliance Act has been enacted by US Congress in March 2010 and will be implemented through certain Regulations to be issued by the US Treasury Department and the Internal Revenue Service (IRS), the US tax authority. Salient features/requirements of FATCA showed that the Foreign Financial Institutions (FFIs) need to enter into an agreement with the IRS and become participating FFIs.

All participating FFIs would need to identify and document information on US accounts maintained with the FFI by US Persons or US owned entities. Secondly, report certain information on the identified US accounts (name, address, account number, Tax Identification Number - TIN, account balance, income and the gross proceeds) and the Recalcitrant accounts (aggregate number and value of accounts) to the IRS, on an annual basis (limited reporting to initiate from March 31, 2015 covering calendar years 2013 and 2014).

Thirdly, withhold 30 percent tax on withhold-able payments (US source income and gross proceeds from the sale of property) and any foreign pass-through payments made to Nonparticipating FFIs. Currently, the US Department of the Treasury is engaged with more than 50 countries and jurisdictions around the world to improve international tax compliance and implement the information reporting and withholding tax provisions. The US Treasury has published model Inter Governmental Agreements (IGAs) for implementing FATCA. These models serve as the basis for concluding bilateral agreements with interested jurisdictions.

As per the available information and the model agreements, published by Office of the US Treasury, an inter Governmental approach can be adopted for sharing information on reciprocal basis. As laid down in the model IGAs there are two possible options for such approach.

From the forgoing, it is obvious that FATCA requirements seems imperative for Pakistani FIs/banks and they will have to share required information with IRS or else face a 30 percent withholding and other related risks. However, an IGA will not only facilitate FIs/banks in providing information rather it may also benefit Pakistan in terms of tax collection from Pakistani nationals having accounts with banks in the US. Therefore, it would be appropriate if the government of Pakistan enters into similar arrangements with the US government for sharing such information on a reciprocal basis. The US government has already welcomed signing of IGAs with interested jurisdictions, experts added. – *Courtesy Business Recorder*

Reference No: ID/PR&D/PDW-II/GRS/2014/18520,

Islamabad, the 7th January, 2014

SECP CIRCULAR NO. 01/2014

Subject: **Growth Rate Scenarios for Life Insurance and Family Takaful Illustrations – 2014.**

Life Insurance & Family Takaful Product Illustration is an integral part of the overall sales process. It helps to enhance transparency, provides better understanding of the product to prospective policy holder and enables them to make informed decisions as well as making comparison between various Life Insurance and Family takaful products.

Life insurance and Family takaful companies use three growth rate scenarios to demonstrate projected benefits to potential policyholders. The SECP specifies these scenarios based on long term interest rate outlook prevalent in Pakistan. The SECP has decided that, for the year 2014, there should be no change in the three scenarios for the rates of return assumption as specified for the year 2013 through Circular No. 1/2013 dated January 16, 2013. Accordingly, the growth rates scenarios for Life insurance and Family takaful illustration will remain at **7%, 9% and 11%** for the year 2014 and onwards.

C.No.4(10)ST-L&P/2011-4443

Islamabad, the 9th January, 2014

SALES TAX GENERAL ORDER NO. 02/2014

Subject: **Amendment in STGO 07/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of electricity.**

In exercise of the powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 07 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, after serial number 1325 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial number and the entries relating thereto shall be **added**, namely:–

S. #	Name of Unit	Registration No.	Consumer No.
1326	M/S A.A.A. Dyeing & Finishing	1200520939173	AP 045954

C.No.4(3)ST-L&P/2011-4452

Islamabad, the 9th January, 2014**SALES TAX GENERAL ORDER NO. 03/2014**

Subject: **Amendment in STGO 16/2007 dated 13-09-2007 – allowing facility of zero-rating on supply of gas.**

In exercise of the powers conferred by clause (d) of section 4 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to make the following further amendments in its Sales Tax General Order No. 16 of 2007 dated 13th September, 2007, namely:–

In the aforesaid General Order, in the Table, after serial number 1022 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial number and the entries relating thereto shall be **added**, namely:–

S. #	Name of Unit	Registration No.	Consumer No.
1023	M/S A.A.A. Dyeing & Finishing	1200520939173	1576480000 (7)

No. PRA/Orders.06/2012/03, Lahore, the 10th January, 2014.– In exercise of powers conferred under section 39 of the Punjab Sales Tax on Services Act, 2012 (XLII of 2012) read with section 14 of the Punjab General Clauses Act, 1956 (VI of 1956), Punjab Revenue Authority is pleased to appoint the officers of the Government mentioned in column No. (2) of the Table below as Commissioner, Additional Commissioner, Deputy Commissioner and Assistant Commissioner of the Authority as mentioned against each in column No. 3 of the Table alongwith their respective territorial jurisdiction:

Sr. No.	Officers of the Government	Designation of PRA
1.	Divisional Commissioner	Commissioner for the whole Civil Division.
2.	Additional Commissioner (Revenue)	Additional Commissioner for the whole Civil Division.
3.	District Coordination Officer	Deputy Commissioner for the whole District.
4.	Additional Deputy Collector (General)	Deputy Commissioner for the jurisdiction to be determined by the District Coordination Officer.
5.	Assistant Commissioner	Assistant Commissioner for the Tehsil.

2. The said officers will exercise powers and perform functions for purposes of the Punjab Sales Tax on Services so far as they relate to:

- i. registration and de-registration;
- ii. monitoring and surveillance;
- iii. audit and inquiries;
- iv. enforcement and adjudication;
- v. penalties and prosecution;
- vi. recoveries; and
- vii. all other allied and ancillary matters.

3. While exercising the powers and performing the functions, the concerned officers of the Government shall comply with all the orders, directions, instructions and advice of the Authority and will be answerable to the Authority in this behalf.

4. Unless otherwise ordered by the Authority, the officers below the rank of Commissioner shall interact with and report to the Authority through the Commissioner incharge following their own line of hierarchy in the field and the Commissioners will directly report to the Authority on the issues and matters pertaining to the management and administration of the Punjab Sales Tax on Services.

5. Unless otherwise directed by the Authority, the powers under this notification shall be exercised by the aforesaid officers in respect of stand-alone businesses providing taxable services in local areas other than telecommunication, banking, insurance, courier (except local segment), franchise and such other multi-outlet or multi-unit service businesses whose headquarters or regional officers comply with the Punjab Sales tax on Services Act 2012 with single registration number under direct intimation to or liaison or coordination with the headquarters office of the Authority.
