

TAXATION

(Weekly Tax Journal)

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Published by Dr. Ikramul Haq,
printed at Meraj Jamshaid Butt
Printers, Rattigan Road, Lahore

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STATUTES

Sales Tax General Order No. 02 of 2013, dated January 08, 2013.
F.No.1(14)Jurisdiction/2011-Vol-II/9512-R, dated January 23, 2013.
Income Tax Circular No. 02 of 2013, dated January 29, 2013.
Selection & Proceedings of Cases For Audit, dated January 29, 2013.
No.1(1)M-IR(Operations)/FBR/2013, dated January 31, 2013.
Sindh Revenue Board Circular No. 01 of 2013, dated January 31, 2013.
SRB-3-4/1/2013, dated January 31, 2013.

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Kind regards

Mrs. Huzaima Bukhari
Editor

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Tax, power sectors need reforms

by
Anjum Ibrahim

The International Monetary Fund (IMF) team visiting Pakistan on a Post Project Monitoring (PPM) mission a couple of weeks ago emphasised yet again the need for power and tax sector reforms and expressed scepticism over the continued inability of the government to begin implementing power sector reforms and realise budgeted revenue targets.

The PPM mission is approved by the IMF management for those of its member countries that either suspend an ongoing IMF programme or cause it to be suspended. Pakistan's 2008 Stand-By Arrangement (SBA) with the Fund was suspended due to the government's sustained failure to implement the agreed reforms in the power sector and amending the tax structure even after a number of extensions were granted to the implementation timeline by the IMF. Thus the IMF evaluation of what the government is not doing that is impacting on key macroeconomic indicators comes as no surprise.

A look at the specific reforms are in order as whoever wins the next general elections and forms the government would be required to implement these reforms on an immediate basis if the objective is improvement in severely stressed macroeconomic indicators. International donor agencies focus with respect to reforms in the utility sector, which several developing countries including Pakistan heavily subsidise, is to ensure full cost recovery. Unfortunately, however, subsidies are rarely targeted to the vulnerable. Pakistan as a case in point fits the bill perfectly and this state of affairs is not specific to the present government. In 2001, total amount owed to Wapda alone was 36 billion rupees - 26 billion rupees was owed by the four provinces and 10 billion rupees by privately operated Karachi Electric Supply Corporation (KESC). The total receivables have escalated over the past nearly five years. There are billions of rupees of payments owed to power distribution companies by the four provinces (Sindh owing the maximum) and by prominent family members of federal and provincial ministers (agreement with Hina Rabbani Khar's husband for deferment of a massive amount of unpaid bills comes to mind). This explains why in the recent Council of Common Interest meeting the Prime Minister constituted yet another ministerial committee headed by Finance Minister Hafeez Sheikh, (though he has consistently failed to help evolve a consensus between his more relevant colleagues notably Ahmed Mukhtar and Dr Asim Hussain in the past). But the other member of the committee namely Khurshid Shah's relevance as the Minister of Religious Affairs to this committee remains a mystery.

Clearing of dues by all sub-sectors operating in the power sector would ease the loadshedding crisis that is less the outcome of generation

capacity and more of mounting inter-circular debt (estimated to be in excess of 400 billion rupees). Thus Pakistan State Oil (PSO) is unable to pay for fuel imports given that the distribution companies are owed large sums by public sector and private consumers which in turn compromises their ability to clear the bills of generating companies that are unable to pay for imported fuel compelling them to operate at well below capacity. Not surprisingly, elimination of inter-circular debt was a critical condition that was agreed by the government of Pakistan with the IMF under the SBA. The circular debt accounts for not only heavy subsidies to the power sector relative to what is budgeted (340 billion rupees additional subsidy was released to the sector last year alone) but there has also been no focus on improving the performance of the sector through identified and agreed reforms.

Wapda has been selling from 250MW to 450MW electricity to KESC even during times when its own system was suffering from severe shortages and load shedding. The rates at which Wapda supplies to KESC are not financially viable and therefore there is a need to re-evaluate the tariff. But then rates at which Wapda supplies electricity to its own consumers are also not viable and full cost recovery remains an unfulfilled objective. The present government simply continued the arrangement of supplying around 300 MW to KESC which has upped the political temperature in Punjab with the PML (N) maintaining that this decision was taken by the coalition partners (the PPP and the Karachi/Hyderabad-based MQM) to 'punish' Punjab for voting PML (N).

The failure to implement tax reforms has been another area where performance has been appallingly poor. The question that is uppermost in the minds of the general public is which party is responsible for the tax system remaining inequitable, unfair and anomalous? The main responsibility rests with Minister of Finance as the Federal Board of Revenue (FBR) comes under his purview. Why does the FBR not control leakages within its own system (estimated at a whopping 500 billion rupees per annum) or propose taxes that are designed to render the system more equitable? Why does the FBR focus on increasing existing taxes rather than on increasing the ambit of taxes to include other rich tax exempt groups which would include the levy of IMF/World Bank proposed value added tax (VAT)? Incidentally, the MQM as well as PML (N) were severely opposed to VAT as its constituents would have been negatively impacted had this tax been implemented. Why does the FBR formulate amnesty schemes (whose number militates against their insistence that this is the very last one) that are being labelled as the taxation national reconciliation ordinance? It is relevant to note that even the IMF team has expressed reservations over the most recent amnesty scheme?

The FBR passes the buck to the cabinet by maintaining that it is an implementer while it is the Minister of Finance who must select and then present recommendations to the cabinet which is the body that approves the tax proposals before they are incorporated in the budget which is tabled in

parliament. The cabinet blames the parliament as many of the taxes that should be levied on influential members of parliament would be shot down, if proposed. Or such is the contention. In short each and every man/woman who is a member of this chain - from the FBR to the MNA - must be held responsible for a tax system that continues to be unfair and anomalous.

Pakistan's reliance on borrowing from domestic sources has escalated as it has failed to generate budgetary support from international donors due to the suspension of the IMF programme, the Fund's refusal to extend a letter of comfort enabling the country to access budgetary support from other donors, and its own inability to begin implementing reforms. The government has also failed to generate budgeted non-tax revenue under two counts for the past three years: (i) awarding of the 3G licences due to frequent scrapping of the tender attributed to lack of transparency, and (ii) the refusal of Etisalat to clear the remaining 800 million dollars owed for the sale of PTCL mainly because of government's inability to meet the terms of the agreement which required the hand over of all properties.

It is imperative that the next government undertakes reforms in these two critical sectors namely power and tax sectors. Unless there is an attempt to ease the power crisis which is the main reason behind a decline in output, increasing relocation of industrial units abroad and consequent unemployment in the country macroeconomic indicators will continue to flounder. In addition a Council of Common Interest meeting must be called on the subject of raising federal and provincial revenues and comparisons with other countries operating within a federal system like India, Australia, etc, to draw parallels must be undertaken.

Sordid story of tax frauds

by

Huzaima Bukhari & Dr. Ikramul Haq

A leading tax expert based in Karachi in the wake of publication of our article ***Beyond Reform*** [*Business Recorder*, December 14, 2012] suggested that “another interesting topic for consideration will be “hyped up” claims that are made by Federal Board of Revenue (FBR) of detection of frauds in billions (it is always **billions**) e.g. in September [2012] FBR claimed to have detected a fraud of Rs. 2.3 billion in shipping on account of sales tax evasion. Fair question is what happened?” He is absolutely right. If we scan the Press reports since 2005, tax frauds involving billions of rupees have been reported, but FBR has never informed the public about remedial measures, quantum of recoveries and number of persons punished.

There are numerous reports of tax scams involving billions and then hushing up of the matters. In a recent ¹news item, it is revealed that

¹ <http://images.thenews.com.pk/23-01-2013/ethenews/e-155900.htm>
2013

“billions of rupees scam was hushed up....without penalizing anyone after passing of several years”. The report says: “According to an inquiry report....conducted by three-member committee...top officers were held responsible....and the inquiry committee submitted its findings before the then Chairman FBR, Sohail Ahmed, on October 30, 2009, but no action has been taken against anyone....the officers who were held responsible in this inquiry report claimed that they were completely clean and reports [against us] never proved at appropriate forums”. The news item raises a very pertinent question “if the report was wrong then what action was taken against those who produced wrong inquiry reports. But, if the report proved correct then why no action was taken against those who were responsible for this scam”. The news item reveals that “both who wrote report as well as all those who were held responsible were not only promoted but also no responsibility was fixed to penalise anyone, exposing how scams were hushed up in the FBR”! **This is the most common modus operandi of FBR—it creates hype about detecting (sic) tax frauds of billions and then entire tax machinery starts hushing up the matter to save the culprits.**

Since the introduction of World Bank funded Tax Administration Reforms Programme (TARP), FBR has been making claims of automating all procedures. All the chairmen of FBR, who headed the apex revenue authority since 2003, have been assuring the public from time to time that after automated procedures under TARP, the possibilities of tax frauds had been effectively countered. But the facts and figures show that in the wake of so-called automation, the incidences of frauds have increased manifold as compared to the period when manual procedures were in vogue.

A report published in *Business Recorder* on December 10, 2012 revealed that Sajjad Akbar Khan, Additional Commissioner of Large Taxpayer Unit (LTU), Karachi, sent a letter to the Chairman FBR, accusing “14 officers of processing and sanctioning bogus refunds worth Rs 77.5 million despite the issuance of the red alerts by the intelligence and investigation of Inland Revenue Service (IRS)”. Till today no follow up is reported.

According to him, a well-organised mafia, colluded with the top guns of the tax machinery executed multibillion rupees of refunds to the bogus business enterprises. This was a serious allegation, but the higher echelons of FBR responded as usual—a committee to probe the matter was constituted! It confirms the pathetic state of affairs prevailing in the apex revenue authority. According to the complaining officer, fake business enterprises were registered and declared to be located in the areas inaccessible—addresses of these units are in Baldia Town, Sher Shah, Orangi Town, etc. These fake units, he alleged, either did not exist or in some cases were in rented premises with some junk/scrap machineries—these were not even registered with any utility company like gas or electricity and the racketeers used fake or stolen computerised national identity cards to show ownership of a typical ghost factory.

The FBR officer who, according to press reports, demonstrated unprecedented courage to expose mafia, asserted: “The mafia has strong influence in hiring, posting, transferring, and firing of the tax officials in RTO Karachi, FBR Headquarter, Investigation and Intelligence wing of Inland Revenue (IR) and any other office”. He further alleged that “any unwanted officer is sent to Legal/IP Division or TFD, which are infamous as the eternal dumping grounds for unwanted officers”. The officer further alleged: “though earlier the mafia was working indiscreetly, now they have become powerful to threaten the officials openly”.

The officer who lodged a written complaint with Chairman FBR of what he called ‘fraudulent tax refunds’ was amongst the 13 officers who refused to serve in the National Accountability Bureau (NAB) on deputation taking a plea that it had become an arm of the government to protect the looters of national wealth and nobody could work there independently. The negative images of FBR and NAB need no further elaboration as majority of the officers working in both the organisations is showing complete distrust—the honest and competent officers are totally disillusioned, rather disgruntled.

According to experts, tax frauds recently surfaced and reported in Press are only a tip-off the iceberg. The actual numbers are enormous and yet to be determined. The experts, media and civil society as a whole have been asking the Parliament to constitute a committee to thoroughly probe the frauds of the last ten years of all concerned tax departments and unearth all cases of loss of revenues, but their voices fell of the deaf ears.

The members of Parliament during their tenure of five years showed little interest in retrieving tax losses through specially constituted committees or public accounts committee, though this could have substantially increased tax collection of Pakistan and helped in promoting tax culture and improving voluntary compliance. The tragedy is that about 70% of members of Parliament did not bother to file their tax declarations as required under the law. The FBR instead of taking action against them defended them saying that “they were paying tax on their salaries regularly”. The issue is not that of withholding of tax (which is automatic and duty of payer) on emoluments they receive, but violation of mandatory provisions of law requiring them to e-file tax returns and wealth statements. FBR has not given any justification for their non-compliance and its non-action (see details in ‘**Tax delinquents**’, *Business Recorder*, January 4, 2013).

While FBR officials are now at war with each other and mafia’s operations are becoming more and more apparent, Transparency International Pakistan has been agitating against the proposed amnesty schemes—it has repeatedly asked for recovery of tax losses of billions from tax evaders rather than giving them legal cover to decriminalise their ill-gotten wealth. In its letter of December 8, 2012, it demanded recovery of Rs. 119.6203 billion from Malik Riaz, Dr. Arsalan Iftikhar and Ahmed Khalil on account of alleged tax evasion determined by Federal

Tax Ombudsman (FTO). The FBR till today has taken no action rather is advocating for an amnesty scheme with full vigour that would extend a helping hand to both the gentlemen and many others of their like to get immunity by just paying 1% of the amount of tax evaded in their entire life! This is FBR's response to all the honest officers like Sajjad Akbar Khan and millions of taxpayers who have been paying taxes diligently.

In November 2012, ¹Transparency International Pakistan claimed to have received complaint of over Rs. 8 billion tax frauds due to alleged collusion between officers of FBR and 16 cosmetic manufacturing units operating in district Swat. As per law existing at the relevant time and even now, if sales of cosmetics are made in Swat these are tax free, but if they are made outside Swat, federal excise duty has been chargeable, but it was not collected for many years. Non-deposit of tax deprived the national exchequer of billions of rupees when the government was borrowing from commercial banks at the exorbitant rate of 12 to 13 percent.

On September 10, 2012, it was ²reported in *Business Recorder* that the Directorate-General of Intelligence and Investigation Inland Revenue (IR) unearthed "massive sales tax evasion worth Rs. 2.34 billion by the ship-breaking industry on the import of 503 vessels between July 2007 and June 2012 and launched recovery proceedings in coordination with tax departments in Karachi and Quetta". Till today no report of recovery is made public.

On September 15, 2012, the then spokesperson of FBR ³claimed that refund scams worth billions of rupees were unearthed. However, she admitted having no information about "any action taken against the involved persons". She referred to another scam where sales tax refunds of Rs. 2.5 billion was issued to the Karachi Electric Supply Corporation (KESC) at a time when the privatised company had to pay Rs1.8 billion to the national exchequer. While the FBR initiated an inquiry into the 'pre-emptive refund' case, no action was reportedly taken against the culprits.

Another case surfaced in the Regional Taxpayer Office III in Karachi, where an officer of Inland Revenue Service who was retiring from service on August 12, 2012 allegedly issued refunds of Rs. 220 million to some taxpayers before the due date for filing tax returns. The same officer was also allegedly involved in another refund scam in the plastic sector but then Chairman FBR instead of taking any action just transferred the officer. The Directorate General Intelligence and Investigation (I&I) of the IRS Wing, it was claimed, had already issued a 'red alert' after unearthing the plastic sector scam, which was worth Rs. 2.25 billion, but FBR high-up preferred not to take any action.

¹ <http://azmatmalic.blogspot.com/2012/11/over-rs-6-billion-fraud-in-fbr.html>

² <http://www.brecorder.com/top-news/108-pakistan-top-news/78236-ship-breaking-industry-probed-fbr-unearths-rs234bn-sales-tax-evasion-.html>

³ <http://www.thenews.com.pk/Todays-News-13-17479-FBR-unearths-refund-scams-worth-billions-of-rupees>

The following summary of major tax frauds, reported in the Press since 2005, establishes beyond any doubt the criminal culpability of the staff and high-ups of FBR and quantum of losses is in billions:

- On December 10, 2012, Chairman FBR appointed two inquiry committees to investigate multibillion rupees refund scams and the loss of up to Rs 1190 million in revenues in the wake of a letter written by Additional Commissioner Large Taxpayer Unit (LTU) Karachi. The reports of committees are still not made public.
- During the first five months of the current fiscal year, the revenue loss, according to FBR's own admission, stood at Rs. 200 to Rs 250 billion, but no curative measures have been made to recoup these admitted losses till today or at least no information is made public.
- FBR says that its data shows that fake input adjustments and illegal refunds caused at least loss of Rs. 537 billion in losses to the national exchequer. Such a huge figure, if correct, is really alarming. It discredits the entire system. Public Accounts Committee must summon Chairman FBR and inquire about it. It is a national scandal that should not go unnoticed.
- Recently, Commissioner Inland Revenue (Appeals-II) Karachi sent a message to FBR Chairman alleging that a senior FBR official had given incentive to two fertilizer companies of the same group causing a loss of Rs. 690 million and Rs. 500 million to the national exchequer. It is unusual coming from an appellate authority when law gives him power to retrieve this loss. He has power of enhancement of income etc.
- In November 2012, 52 companies in Karachi alone were blacklisted, while registration of 10 was suspended/blocked after their alleged involvement in what tax authorities termed as a 'daylight dacoity'. The blacklisted companies provided fake input adjustment invoices resulting into fake refunds of Rs. 40-45 billion..
- In August 2012, FTO instructed the FBR to restructure the Pakistan Revenue Automation Ltd (PRAL) and Investigation & Intelligence with a view to transforming them into proactive agents of sales tax fraud prevention and detection. The FTO gave these instructions on a decision on a complaint filed by a Lahore-based Advocate. According to the complaint, tax fraud taking place on such a large scale could not be perpetrated without insider information and support.
- In July 2012, Rs 47 billion tax scam involving five cellular companies surfaced when NAB barred the FBR from granting what it termed unjust relief through a Statutory Regulatory Order (SRO) giving waiver in respect of tax chargeable on

interconnection service to these companies. It is strange that till today no action is taken against the culprits.

- In April 2012, while the imbroglio surrounding one of the country's biggest scams of missing containers was still lingering on, another 785 boxes belonging to Afghan Transit Trade went missing. They were not de-sealed at the customs border check posts. This raised a big question mark about the performance of the customs authorities because disappearance of boxes from computer screen at any stage raised controversies, difficult to be substantiated when it came to investigation or litigation. **Missing container case even after taking action by the Supreme Court is lingering on and there is no report about the actual loss of revenue (which according to FBR's own admission was about Rs. 45 billion) and any retrieval so far.**
- In March 2012, sales tax scandals amounting to Rs. 159 billion were unearthed involving multinational companies and large industrial groups. Large Taxpayer Unit in Karachi detected sales tax fraud amounting to Rs. 25 billion. Islamabad's Large Taxpayer Unit, which detected Rs. 10 billion worth of sales tax fraud and Lahore's Large Taxpayer Unit, pointed out unlawful adjustments in sales taxes to the tune of Rs. 8 billion.
- In April 2011, the Directorate of Intelligence arrested two persons involved in issuance of fake sales tax invoices for generating illegal input tax adjustment or refund. Both were wanted in a tax fraud case of Rs. 7.5 billion.
- In 2010, the Directorate General of Intelligence and Investigation detected 166 cases of tax evasion, involving duty and taxes amounting to Rs. 2,828 million in the first six months (July-December) of 2009-10.
- In 2009, 59 cases of duty and tax evasion amounting to Rs. 1,603 million were detected.
- On 14 January, 2008, Directorate-General of Intelligence and Investigation detected "an organised tax fraud in Punjab involving a gang of income tax officials, who issued fraudulent refunds to the fake government contractors". According to details "the nature of this tax fraud was entirely different from the modus operandi of the income tax gangs recently busted in Enforcement Zone, Companies-IV, Karachi and Lahore".
- On 5 January 2008, a report was published in leading newspapers disclosing that FBR unearthed a scam in Lahore involving a senior income tax official (Grade-20), who allegedly issued bogus refunds of over Rs. 103 million in 39 cases on forged documents during 2003-2007. Earlier a similar scam was reported in Karachi.

- On 22 October 2007, Directorate-General of Intelligence, Customs and Excise, instituted criminal proceedings against 14 industrial units of Punjab for claiming illegal sales tax refunds by filing bogus invoices. The fraud took place two years ago when many commercial exporters had claimed illegal refunds on the basis of fake documents (FBR took two years to take notice of the crime!). Obviously the beneficiaries were giving huge bribes to concerned officials, who are still working without any fear of accountability.
- On 2 June 2007, FBR issued notices to pay some phone companies for recovery of Rs. 370 million falsely claimed refunds. The Board launched adjudication proceedings against these companies involved in obtaining illegal excise duty refund. In this connection, formal notices have been served to these companies.
- On 14 May 2006, the apex court rejected the bail application of one Raja Zaraqat, “who was wielding far larger financial clout than originally estimated” in getting billions of rupees as tax refund on forged documents [says a Press release of FBR!]. The FBR disclosed that although the first complaint against the accused was received by it in December 2005 yet no action was taken till 4 May 2006 when the accused was arrested in Islamabad. It is obvious that this colossal tax fraud was not possible without the connivance of tax officials.
- A scam in Lahore involving a senior income tax official (Grade-20), who allegedly issued bogus refunds of over Rs. 103 million in 39 cases on forged documents during 2003-2007, was unearthed. FBR sources in the Directorate General of Intelligence and Investigation revealed that the official not only tampered with the tax record in certain cases, but also grossly violated rules and regulations, particularly Income Tax Ordinance 2001 to facilitate the illegal refunds. Tax fraud in the Companies Zone, Lahore, appeared to be committed on the same pattern as Companies Zone, Enforcement Zone-B Karachi. The astonishing part of the story, as narrated in Press report, was that the corrupt official was appointed to work as Member Tribunal to settle income tax-related disputes of taxpayers. He also issued illegal refunds during his appointment on other positions in Lahore, showing serious loopholes in the system to check the wrongdoings of senior tax officials in field formations.
- During 2003-2007, one tax official used different techniques to issue illegal refunds in several cases without any check by any agency. It was found that the accused official during his appointment as Commissioner Income Tax (CIT), Companies Zone-II, Lahore was allegedly involved in corruption. Details

collected by an intelligence agency revealed that the official deliberately issued bogus refunds of Rs. 19.211 millions to an electronic company in 2003, 2004 and 2005 despite the fact that tax record was tempered by changing figures/important documents. The examination of record also showed concealment of basic facts of the case and flouting of statutory provisions and legal requirements. The official deliberately drafted wrong cases showing misstatements to give legal backing to the bogus refunds. In another case, the official issued bogus refund of Rs. 33.99 million to a company for the tax year 2004. The objections raised by the lower income tax officials were ignored to issue bogus refunds. According to Press reports, the accused official was also given additional charge of Commissioner of Income Tax Zone-A, Lahore for 2-3 weeks in June, 2007. During this period, illegal refunds were issued in 37 cases involving over Rs. 50 million by committing serious violations of law. In all 37 cases, violations in interpretation of law were so blatantly committed that they were clearly visible even on initial scrutiny of documents. The Board reportedly initiated disciplinary proceedings against the official under the Removal from Services (Special Powers) Ordinance 2000, but he not only survived but got promotion in Grade 21!

- FBR suspended three senior income tax officials of Karachi, who allegedly sanctioned Rs. 138.460 million fake refunds on bogus tax deduction certificates issued by some stock exchange members. FBR constituted a high-level committee to probe this mega tax fraud. The Director General Intelligence and Investigation recommended to the Board that immediate action be taken against a former commissioner of Income Tax, Companies Zone-IV, Karachi; ex-Additional Commissioner Companies Zone-IV, Karachi and Ex-DCIT, Companies Zone-IV, Karachi. The FBR was also required to obtain tax record from Regional Tax Office (RTO), Karachi, for fixing responsibility on PRAL, stock exchanges and identification of banks. On the findings of the DG Intelligence, the FBR initiated disciplinary proceedings against the suspected income tax officials. The DG Intelligence apprehended that Board's immediate attention was needed in this regard, otherwise its negative fallout might cause irreparable loss in meeting the revenue target. FBR found that the former officials of Enforcement Zone, Companies-IV Karachi used illegal 'tax deduction certificates' issued to some stock exchange brokers for claiming refund. The Vigilance Wing of DG Intelligence detected that the three ex-income tax officials of Companies Zone-IV caused huge loss to the exchequer by issuing bogus income tax refunds to hundreds of individuals

during 2006-07. The involved officials issued illegal refunds to individuals who were out of the Companies Zone-IV, Karachi, jurisdiction. FBR sources said the illegal refunds were issued in such a manner that all the elements of an organised crime were present. The DG Intelligence had detected that refunds were issued on the basis of certificates u/s 164 of Income Tax Ordinance, 2001 to selected brokers/individuals for trading in shares. Under the law, members of the stock exchanges were not authorised to issue such certificates. The individuals whom refunds had been issued did not fall under Enforcement jurisdiction of Companies Zone-IV, Karachi. The National Tax Numbers (NTNs) of these individuals were in serialised sequence, pattern of tax years was identical, refund cheque numbers were in serialised sequence, dates of refunds were identical, whereas members/brokers issued unauthorised certificates to individuals/brokers under section 164. Interestingly, refunds were issued to individuals, who were residents of other cities/stations and their particulars do not match with the NTN Master Index.

The above list is not exhaustive but is just a tip-off the iceberg. The news in Press was provided/leaked by FBR itself—these were not investigative reports by journalists. The increased numbers of refund scams and unfettered tax evasion confirm that nothing has changed in FBR even after so-called reforms funded through loans worth millions of dollars. It is a sad reflection on FBR's top management. Even NAB after these reports did not take any action against the culprits to recover losses caused to national exchequer.

The failure of FBR, NAB and FIA has been encouraging the corrupt, criminals, tax evaders, smugglers, drug dealers, terrorists, rent-seekers, and profit-hungry unscrupulous businessmen not to pay taxes but just give officials their due “share”—in return FBR draft amnesty schemes for them to whiten their untaxed assets by just paying 1 to 1.5 percent. Even otherwise a permanent amnesty scheme is available in the form of section 111(4) of the Income Tax Ordinance, 2001 that ensures no question will be asked about the source of funds brought through remittances. One can go to any money-exchange dealer, give him local currency and he will arrange “remittance” (sic) for a small premium. In the presence of this obnoxious provision, why should the rich, corrupt, criminals bother about paying tax and filing returns?

The tax-evaders and dishonest tax officials together constitute a mafia that has converted Pakistan into a haven for tax dodgers and plunderers of national wealth. In the morning many FBR's officials “deal with clients” in offices and in the evening render them “professional” services on *muk-muka* (settlement) basis at their homes or offices of tax advisors where they work part time!. It is beyond any doubt that the prevalent

mass-scale tax evasion is not possible without the connivance of tax administrators.

The tax officials holding key posts are holding the same on the recommendations of their political masters and not on merit. They create exemptions and concessions for them by issuing Statutory Regulatory Orders (SROs). The case of sugar industry—cartelized by dominant politicians of all parties—is a classic case for study. The unholy alliance between the tax evaders (majority of them are politicians-cum-businessmen) and tax officials deprives the national exchequer of billions of rupees and the rest of the nation is facing economic hardships. This unholy alliance designs and implements policies for “mutually-beneficial” relations and its outcome is total destruction of our socio-economic system (we are witnessing ever-increasing rich-poor divided, chaos and lawlessness).

Pakistan is now controlled and ruled by mafias—people in possession of colossal untaxed assets, immense money generated through unlawful means. These mafias are crippling all State institutions. Since members of Senate and National Assembly have either failed to file ¹ tax declarations or where filed are hopeless, the mafia chiefs and their cronies are operating fearlessly knowing that law violators can never establish rule of law. The FBR, being handmaid of these mafias, protects them through tax amnesty schemes or non-action against the tax evaders. The tax evaders, plunderers of national wealth, the corrupt, drug barons and extortionists have already hijacked all the state institutions. In these circumstances, tax evasion and tax frauds can only be countered through a permanent public commission, representing the people from all walks of life, which should probe the cases, release its reports in the Press on monthly basis, recommend actions for retrieval of tax losses and punitive measure against the culprits.

Living beyond means

by

Huzaima Bukhari & Dr. Ikramul Haq

The State Bank of Pakistan (SBP) on January 22, 2013 reported that public sector borrowing from commercial banks between July 2012 and January 2013 rose to Rs. 770 billion from Rs. 627 billion a year ago—since spending grew faster than income the result is a monstrous fiscal deficit posing serious threat to an already struggling economy. In the absence of foreign inflows, the net government borrowing from banks alone amounted to Rs. 762 billion during July 1, 2012 to January 11, 2013 as against the borrowing of Rs. 634 billion reported last year.

¹ <http://www.cirp.pk/download.htm>

Despite receipts of \$688 million under the Coalition Support Fund, the budgetary gap is widening. At the present pace of fiscal deficit, bank borrowings are going to increase substantially in the remaining months of the current fiscal year. The overall fiscal deficit is estimated to be around 7% to 7.5% of GDP with financing requirement of Rs. 1,624 billion by the end of this fiscal year, as per the latest estimates issued by International Monetary Fund (IMF).

This reckless and unabated borrowing by the government from commercial banks is not only retarding growth by depriving private sector of the much-needed funds for investments but is also forcing SBP to inject heavy amounts of liquidity in the banking system through frequent open market operations, as the high borrowings wipe out liquidity from the money market. The government has not bothered at all to mobilise tax revenues by cutting down expenditures on energy subsidies and curtailing losses of public sector enterprises to meet the challenge of keeping fiscal deficit within safe limits.

During July 1, 2012 to January 11, 2013, the government borrowed Rs. 594 billion from the banking system for budgetary support and retired Rs.168 billion to the SBP. Considering the size and magnitude of Pakistan's public debt a high fiscal deficit is inevitable, as the country's total debt and liabilities have increased to Rs.15.1 trillion, or 68.4 percent, of GDP in the first quarter of the current fiscal year, while debt alone stood at Rs 14.4 trillion, or 65.3 percent of GDP during the same period. According to IMF's latest report, fiscal deficit reached 8.5 percent of GDP in 2011-12, against the original budget target of 4 percent, reflecting both revenue and expenditure slippages, including higher subsidies mainly to clear arrears in the power sector.

Although the State is caught in a deadly debt trap, the government continues to borrow funds from banks to pay off liabilities of the corruption-ridden inefficient public sector enterprises (PSEs). The SBP has revealed that settlement of circular debt of power sector PSEs and public procurement agencies resulted in billions of rupees increase in the stock of total debt & liabilities (TDL). Accumulated loss of PIA alone has reached the figure of Rs. 125 billion by the end of 2012.

We have pointed out time and again in these columns that the government has failed to devise a strategy for raising revenues even to the extent of Rs. 6 trillion, though actual potential is not less than Rs. 8.5 trillion. Unless it is done, Pakistan can never come out of the 'debt prison'. The Senate was informed on January 23, 2013 that over 3.39 million people have so far been issued National Tax Numbers (NTNs), but only 810,000 filed their income tax returns during the current year. In a written reply, Finance Minister, Abdul Hafeez Sheikh admitted that the number of income tax filers had drastically reduced to 1.6 million in 2009 and only 810,000 people filed their returns by the end of this year. The Senate was told that "a large number of businesses and individuals, who were regularly filing

their income tax returns, are now avoiding their legal obligations by either under-declaring or incorrectly declaring their assets and incomes”.

One of the major weaknesses of governance is failure to check widespread tax evasion and wasteful spending on monstrous government machinery and inefficient PSEs. Our foreign debt is going to be US\$75 billion in 2015 and domestic debt Rs. 25 trillion if curative measures and tough decisions are not taken in time. The policy of appeasement towards tax evaders, money launderers and plunderers of national wealth, if not discontinued, will push the country to a complete disaster. The shameless indulgence of rulers and bureaucrats in wasteful expenditure—when half of the population of the country is facing malnutrition—is not only shameful, it is simply criminal.

The word ‘austerity’ is not in the dictionary of politicians in power, high-level civil military bureaucrats and public office holders. The tradition of living beyond means—our national addiction—has turned the nuclear-powered Pakistanis into a nation holding the beggar’s bowl. When foreign lenders see the lifestyle of our ruling elite, they immediately show indignation—it is hard to believe for them that the rulers of a nation struggling on borrowed funds are able to display such flamboyance.

Today’s Pakistan represents a State where a trio of civil-military bureaucrats, politicians and businessmen is very affluent, but the Government is on the brink of bankruptcy. This state of affairs is the direct outcome of government’s policies allowing free hand to forces of loot, corruption and terrorism.

The reluctance to collect taxes from the rich and mighty is worsening the miseries of the poor—there is no scarcity of resources as propagated by the rulers to shift blame on others, but the real cause is outlandish living of the elites off taxpayers’ money. Wasteful spending out of taxes collected from the poor and unwillingness to harness the real potential of Rs. 8 trillion by taxing the rich is playing havoc with the economy as well as the socio-economic fabric of society. Behind the present chaotic socio-economic and political situation in Pakistan, amongst other factors, is an ever widening gulf between the rich and the poor. It is shocking that with every passing day more and more people are being pushed below the poverty line—their total number is now not less than 60 million in a country where rulers unashamedly waste billions of rupees on their personal comfort and so-called security.

For financial year 2012-13, a cursory look at the Annual Budget Statement reveals a disturbing story. Analysis of two sizeable volumes, prepared and published by Finance Division, Ministry of Finance, commonly called the “*Pink Book*”, shows how public money is wasted on unproductive, unnecessary and humungous federal government offices when millions of people are homeless, starving and sick.

Fiscal deficit of Rs. 1.7 trillion is expected during the current fiscal year. This testifies to bankruptcy of our political leadership and economic managers, who keep on relying on an incompetent and corrupt

bureaucracy. As regards technocrats imposed upon Pakistan, they always take the first flight to Washington after creating mess of the things. The policy of appeasement towards tax evaders, money launderers and plunderers of national wealth is showing its impact in all spheres: political culture of rapidly changing loyalties continues, nation is in high despair and all sectors of economy are showing alarming indicators. In this bleak scenario, neither our political leaders nor technocrats dominating the Finance Ministry have definitive plans for resolving these crises.

All said and done, nothing will change in Pakistan unless rulers start living within their means. Unashamedly, they are not ready to surrender extraordinary perks and privileges enjoyed by them at the cost of taxpayers' money. How can rulers and bureaucrats living in fortified containments, completely oblivious of the ordinary people's plight feel the pinch of life's hardships? In a democratic set-up, responsibility towards people who vote for parliament and accountability are interconnected. The concept of modern egalitarian State emerges from the sovereign right of the Parliament to levy taxes [Article 77 of the Constitution of Pakistan] but simultaneously it is required to spend the same for public welfare rather than for personal comfort and self-aggrandizement [Article 3 of the Constitution of Pakistan]. This second part of democracy is completely missing in Pakistan.

We cannot come out of debt-enslavement, which is the main cause of our subjugation, unless we first become an economically self-reliant nation for which taxing each according to his ability and giving each according to his work, as enshrined in Article 3 of the Constitution, is a prerequisite. All forms of exploitations are to be reduced, if not fully eliminated. For this, the starting point should be a complete change in the style of governance—the President, Prime Minister, ministers, parliamentarians, heads of political parties and high-ranking government officials start living at the average man's level. Palatial government residences should be sold to the private sector and all perquisites should be monetized to remove the burden off this country's broken financial back.

Tax amnesty schemes as introduced by Tax Laws (Amendment) Bill, 2012

by
Wasful Hassan Siddiqi

Prelude: The Senate Standing Committee on Finance on January 05, 2013 cleared "Tax Laws (Amendment) Bill, 2012" aimed at bringing 3.1 million potential individuals into the tax net with a recommendation that all those who are part of the government -- parliamentarians, bureaucracy, military and their dependents - would not be entitled to avail the scheme. The Bill in order to become the law (ACT) and to come in force, is still awaiting parliamentarians approval.

Tax Laws (Amendment) Bill, 2012 offers tax amnesty by way of:

1. Investment Tax Scheme
2. Tax Registration Scheme

Amendments in Tax Laws

By the Tax Laws (Amendment) Bill, 2012, following Acts have been proposed to be amended with immediate effect:

- i) Custom Act, 1969
- ii) Sales Tax Act, 1990
- iii) Federal Excise Duty Act, 2005
- iv) Income Tax Act, 2001

Non-eligibility

Senate has recommended that the immunity under registration and investment schemes would not be available to any person who was holder of public office as defined in clause 'm' of section 5 of the National Accountability Ordinance 1999 (Ordinance XVIII of 1999) in the preceding five years and to his dependents.

Date of Application

[Section 1 (sub-section 2) of Tax Laws (Amendment) Act, 2012]

The bill is still pending with the parliament and the same will become law (Act) and come in force at once in the same condition or after further amendments if necessary as and when it is approved by the parliament and assented to by the president.

Public opinion on the Tax Amnesty Schemes

The Tax Laws (Amendment Bill, 2012) offering the tax amnesty schemes has been criticised by some quarters. It is termed as another financial NRO in favour of country's 'super rich' who have amassed enormous wealth by foul means without paying due taxes thereon.

The Chairman FBR announced that it had identified around 3.1 million such people who have travelled through air, keep more than one bank accounts and vehicles and those would be provided a chance to get themselves registered under the new tax amnesty scheme.

He warned that the computerized national identity cards of those who don't pay their taxes on time would be blocked while their names would also be put on the Exit Control List (ECL). FBR is determined that tax amnesty scheme will be presented in the National Assembly.

By the prolonged delay in passing the Bill, however it appears that perhaps the parliament whose term ends in March, 2013 will leave the matter undecided for the next government.

Proposed Amendments in Tax Laws

Previously any aggrieved person (except where FIR had been lodged or criminal proceedings initiated) in case of customs, sales tax and FED could apply for the appointment of committee for dispute resolution.

Amendments are proposed in: (i) Custom Act, 1969, (ii) Sales Tax Act, 1990 and (iii) Federal Excise Duty Act, 2005 as under:

i) Customs Act, 1969

Amendment of section 195-C, Act IV of 1969.- In the Customs Act, 1969 (IV of 1969) in section 195-C,—

(a) in sub-section (1), the commas and words “,except in the cases where first information reports (FIRs) have been lodged or criminal proceedings have been initiated or where interpretation of question of law having larger revenue impact in the opinion of the Federal Board of Revenue is involved,” shall be omitted; and

(b) for the sub-section (4), the following shall be substituted, namely:—

The Board shall, within forty-five days of the receipt of the recommendations of the Committee, pass an order accepting the recommendations or rejecting the same after recording the reasons thereof in the aforesaid order.

ii) Sales Tax Act, 1990

Amendment of section 47A Sales Tax Act, 1990.- In the Sales Tax Act, 1990, in section 47A,—

(a) in sub-section (1), in clause (e), the commas and words, “,except in the cases where first information report (FIRs) have been lodge under the Act or criminal proceedings initiated or where interpretation of question of law having larger revenue impact in the opinion of the Federal Board of Revenue is involved,” shall be omitted; and

(b) for sub-section (4), the following shall be substituted, namely:

The Board shall, within forty-five days of the receipt of the recommendations of the Committee, pass an order accepting the recommendations or rejecting the same after recording the reasons thereof in the aforesaid order”.

iii) Federal Excise Duty Act, 2005

Amendment of Federal Excise Act, 2005.- In the Federal Excise Act, 2005, in section 38,-

(a) in sub-section (1), in clause (e) the commas and words “,except in the cases where first information reports (FIRs) have been lodged under the Act or criminal proceedings initiated or where interpretation of question of law having larger revenue impact in the opinion of the Board is involved,” shall be omitted; and

(b) for the sub-section (4), the following shall be substituted, namely:—

The Board shall, within forty-five days of the receipt of the recommendations of the Committee, pass an order accepting the recommendations or rejecting the same after recording the reasons thereof in the aforesaid order.

By the proposed amendments in the above mentioned tax laws, the exceptions in case of ‘FIR lodged or criminal proceedings initiated’

against any person have now been omitted; and the Board shall, within forty-five days of the receipt of the recommendations of the Committee, pass an order accepting the recommendations or rejecting the same after recording the reasons thereof in the aforesaid order”.

iv) Income Tax Ordinance, 2001

In Income Tax Ordinance, 2001 in section 79 in sub-section (2) after the words “person” the words “not a citizen of Pakistan” shall be inserted. It means that Non-Resident Person will not be eligible to avail the proposed tax amnesty schemes.

By amendments in Income Tax Ordinance, 2001 two separate tax amnesty schemes have been announced as under:

1. Investment Tax Scheme Annexure - I

(u/s. 120A)

2. Tax Registration Scheme Annexure – II

(u/s. 120B)

Both these schemes are thoroughly discussed in the attached annexures (Annexure - I and Annexure II).

According to the Bill, where a person has paid registration tax:

i) He shall be entitled to incorporate income/assets/expenses with a declared value up to Rs 5 million in his books of accounts.

ii) He shall not be liable to any further tax, charge, levy, penalty or prosecution under the Income Tax Ordinance in respect of his income for any of the tax years prior to the tax year in which he has paid the registration tax.

An existing taxpayer who desires to declare undisclosed income / assets / expenditure up to the declared value of Rs 5 million shall file a declaration under the scheme made by payment of token Investment Tax of Rs 100 and an existing taxpayer who desires to declare undisclosed income/assets/expenditure with a declared value exceeding Rs 5 million shall pay Investment Tax as provided. Where any person has paid Investment Tax, he shall be entitled to incorporate income/assets/expenses declared in the declaration filed under the scheme in his books of accounts.

The contents of a declaration shall remain confidential and shall not be disclosed.

Filing of Income Tax Return

Tax Laws (Amendment) Bill, 2012 provides that the taxpayers availing the schemes shall be obliged to file returns of income for the succeeding tax year and subsequent three consecutive tax years. If any taxpayer fails, without reasonable cause to file return for the succeeding tax year and the subsequent three consecutive years the immunities granted shall automatically stand withdrawn and action under Chapter VII, Parts I, II,

IV, VIII, X, XI and XII of Chapter X of the Ordinance shall be taken notwithstanding any limitation prescribed under the Ordinance.

Claim for Adjustment of Tax already paid / Deducted Subject to Filing of Return

[u/s. 120B(5)]

Any claim for adjustment of tax already paid, collected or deducted under the Ordinance against the registration tax payable under sub-section (2), shall not be admissible unless regular return of income is filed by the taxpayer and in such case provisions of this section shall not apply.

Appeal

[u/s. 120B(7)]

A “registered non-filer” and/or “un-registered non filer” having multiple bank accounts, or having undertaken foreign travel or living in expensive localities or owning immovable assets who after receiving intimation from NADRA or from the Commissioner feels that he or she is not liable to pay registration tax under the scheme made under sub-section (1) may file an appeal in the appeal form annexed with the scheme with reasons and basis and evidence of objection by the date provided in the scheme before the concerned Commissioner who shall dispose off the same within 20 days of its receipt after affording an opportunity of hearing.

In case Registration Tax is not Paid or Appeal not Filed, Finalization of assessment u/s. 122C

[u/s. 120B(8)]

Any person who does not opt to pay the registration tax required to be paid under the scheme made under sub-section (1) and does not file appeal before the concerned Commissioner in the time and the manner provided under sub-section (7) and the scheme or the appeal filed by him is rejected by the Commissioner, shall be liable to Finalization of provisional assessment under section 122C and all the provisions of the Ordinance shall apply accordingly. During the pendency of proceedings under section 122C and the resultant recovery proceedings the person shall, notwithstanding anything contained in any other law, be liable to suspension of his CNIC, placement of his name on the Exit Control List (ECL), freezing of his bank accounts and blocking of his mobile phone SIMs after being provided an opportunity of being heard.

Immunity not for Holder of Public Office

Senate has recommended that the immunity under registration and investment schemes would not be available to any person who was holder of public office as defined in clause ‘m’ of section 5 of the National Accountability Ordinance 1999 (Ordinance XVIII of 1999) in the preceding five years and to his dependents.

Under clause ‘m’ of section 5 of the National Accountability Ordinance 1999, “Holder of public office” means a person who has been President of Pakistan or the Governor of a Province. “Holder of public office” also

means a person who is, or has been the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney General and other law officers appointed under the Central Law Officers Ordinance, 1970, Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Auditor General, Political Secretary, Consultant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State.

“Holder of public office” also means a person who is, or has been, Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate General including Additional Advocate General and Assistant Advocate General, Political Secretary, Consultant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister.

“Holder of public office” also means a person who is holding, or has held, an office or post in the service of Pakistan, or any service in connection with the affairs of the Federation, or of a province, or of a local council constituted under any federal or provincial law relating to the constitution of local councils [co-operative societies] or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organisation established, controlled or administered by or under the federal government or a provincial government, other than a person who is a member of any of the armed forces of Pakistan, except a person who is, or has been a member of the said forces and is holding, or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organisation established, controlled or administered by or under the Federal Government or a Provincial Government [or notwithstanding anything contained in the Pakistan Army Act, 1952 or any other law for the time being in force, a person who is a civilian employee of the Armed Forces of Pakistan.

“Holder of public office” means a person who has been the Chairman or Vice Chairman of a zila council, a municipal committee, a municipal corporation or a metropolitan corporation constituted under any Federal or Provincial law relating to local councils, clause m of section 5 of the National Accountability Ordinance 1999 added. The report of the Standing Committee on Finance and Revenue has also proposed other amendment to the Tax Laws (Amendment) Bill, 2012.

Disclaimer

No responsibility is taken for any error or omission. The material contained in this update is not intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this update without considering appropriate professional advice. We expressly

disclaim all and any liability to any person in respect of anything and of the consequence of anything done or omitted to be done by any such person in reliance upon the contents of this update.

Annexure – I

INVESTMENT TAX SCHEME

(Section 120A of Income Tax Ordinance, 2001)

In order to give effect to the Investment Tax Scheme, the Income Tax Ordinance, 2001 has been further amended by enacting Tax Laws (Amendment) Act, 2012.

i) Non-Eligibility

[Section 79 (sub-section 2)]

By insertion of sub-section (2) in section 79, the person other than citizen of Pakistan who is a non resident person shall not be eligible to avail the benefit of this scheme.

ii) Date of Application

[Section 1 (sub-section 2) of Tax Laws (Amendment) Act, 2012]

The bill is still pending with the parliament and the same will become law (Act) and come in force at once as soon as it is approved by the parliament and assented to by the president.

iii) Investment Tax

[Section 120A (sub-section 2)]

Sub-section (2) of section 120A has been substituted by the following, namely:

(a) Un-registered non-filers and registered non-filers who have made declaration under a scheme made under section 120B and desire to declare undisclosed income/assets/expenditure with declared value exceeding Rs 5 Million shall be required to pay in addition to Registration Tax as defined in section 120B, Investment tax on the declared value of the assets / income / expenditure exceeding Rs 5 Million at the following rates:-

Sr No	Payment Month	Rate of Investment Tax
1.	First Month	1.00%
2.	Second Month	1.25%
3.	Third Month	1.50%

The existing taxpayer who files declaration and disclosed undisclosed income/assets/expenditure.

(b) A payment of token investment tax of Rupees 100 shall be paid on the declared value up to Rs 5 million.

(c) Investment tax at the rates provided in clause (a) of this sub-section will be paid on the declared value exceeding Rs 5 million.

Entitlement

[u/s. 120A(3)(a)]

(3) Sub-section (3) shall be substitute by the following, namely:

“Where any person has paid investment tax, he shall be entitled to incorporate income / assets / expenses declared in the declaration under the scheme in his books of account.”

No further liability for charge, levy, penalty or prosecution

[u/s. 120A(3)(b)]

Having paid the investment tax, the taxpayer shall not be liable to any further tax, charge, levy, penalty or prosecution under the Ordinance in the respect of the income / assets / expenses.

Confidentiality

[u/s. 120A(3)(c)]

The contents of a declaration shall remain confidential and shall not be disclosed in any minor.

Non admissibility in evidence-information declared by the taxpayers

[u/s. 120A(3)(d)]

Nothing contained in any declaration shall be admissible in evidence against the declarant for the purposes of any tax/charge/proceedings/penalty/prosecution under any of the following Acts/Ordinance:-

- (i) Income Tax Ordinance 2001 as amended from time to time;
- (ii) Foreign Exchange Ordinance 2002 as amended from time to time;
- (iii) Companies Ordinance 1984 as amended from time to time;
- (iv) National Accountability Ordinance 1999 as amended from time to time;
- (v) Federal Investigation Agency Act 1974 as amended from time to time.

Exception

The immunity under this scheme shall not extend to offences under:-

- (i) Narcotic Substances Act, 1997 as amended from time to time;
 - (ii) The Anti Terrorist Act, 1997 as amended from time to time; and
 - (iii) The Anti Money Laundering Act, 2010.”
- (iv) after sub-section (3) substituted as above the following new sub-sections shall be inserted, namely:-

Execution & Implementation of the Scheme

[u/s. 120A(3A)]

For the purposes of execution and implementation of a scheme under this section besides Income Tax authorities, National Database and Registration Authority (NADRA) and banks shall also be authorised to,-

- (a) accept declaration;
- (b) accept registration tax;

- (c) issue receipts; and
 - (d) issue NTN,
- in accordance with the said scheme.

Filing of Returns

[u/s. 120A(3B)(1)]

Tax payers availing the scheme made under sub-section (1) shall be obliged to file returns of income for the succeeding tax year and subsequent three consecutive tax years. If any taxpayer fails, without reasonable cause to file return for the succeeding tax year and the subsequent three consecutive years the immunities granted under sub-section (3) shall stand automatically withdrawn and action under Chapter VII, Parts I, II, IV, VIII, X, XI and XII of Chapter X of the Ordinance shall be taken notwithstanding any limitation prescribed under the Ordinance.

Definition

[u/s. 120A(3B)(iii)]

For the purpose of this scheme following terms will be defined as under:

“(iii) “Declaration” means declaration made on the prescribed form annexed to the Scheme made under sub-section (1);

(iv) “Declarant” means a person, as defined under section 80 of Income Tax Ordinance, 2001, who files declaration under the Scheme made under sub-section (1);

(v) “Registration Tax” means Registration Tax as defined in sub-section (9) of section 120B and as per rates given in sub-section (2) of section 120B;

(vi) “Registered non-filer” means any person who has been allotted an NTN and,-

(a) has not filed a return of income for three tax years out of any five completed tax years;

(b) has never filed a return of income; or

(c) has filed a return of income for any of the tax year prior to five completed tax years; and

(vii) “Unregistered non-filer” means a person who does not have an NTN or has never filed a return of income”.

Annexure – II**TAX REGISTRATION SCHEME**

(Section 120B of Income Tax Ordinance, 2001)

1. Tax Registration

[u/s. 120B(1)]

Notwithstanding anything contained in this Ordinance or any other law for the time being in force, the Board may make a scheme of registration,

on payment of registration tax under sub-section (2), in respect of registered and un-registered non-filers.

2. Tax Registration Rates

[u/s. 120B(2)]

Where any person being an individual or an Association of persons to whom an intimation from NADRA or from the Commissioner has been issued opts to regularise his income tax affairs vide the scheme made under sub-section (1), he shall be required to pay registration tax at the following amounts depending on the time of payment:-

Sr No Payment Month Amount

1. First Month Rs 40,000
2. Second Month Rs 50,000
3. Third Month Rs 70,000

3. Where a person has paid registration tax in accordance with sub-section (2) and the scheme made under sub-section (1),-

Entitlement

[u/s. 120B(3)(a)]

He shall be entitled to incorporate income/assets/expenses with a declared value upto Rs 5 Million in his books of accounts;

No further liability for charge, levey penalty or prosecution

[u/s. 120B(3)(b)]

He shall not be liable to any further tax, charge, levy, penalty or prosecution under the Ordinance in respect of his income for any of the tax years prior to the tax year in which he has paid the Registration tax.

Confidentiality

[u/s. 120B(3)(c)]

The contents of a declaration shall remain confidential and shall not be disclosed. The provisions of section 216 shall be fully applicable to the declarations made under the scheme made under sub-section (1).

Non admissibility in evidence-information declared by the taxpayers

[u/s. 120B(3)(d)]

Nothing contained in any declaration shall be admissible in evidence against the declarant for the purposes of tax/charge/proceedings/ penalty/ prosecution under any of the following Acts/Ordinance:-

- (i) Income Tax Ordinance 2001 as amended from time to time;
- (ii) Foreign Exchange Ordinance 2002 as amended from time to time;
- (iii) Companies Ordinance 1984 as amended from time to time;
- (iv) National Accountability Ordinance 1999 as amended from time to time; and
- (v) Federal Investigation Agency Act 1974 as amended from time to time.

Exception

Provided that the immunity under this sub-section shall not extend to offences under:–

- (i) Narcotic Substances Act, 1997 As amended from time to time;
- (ii) The Anti Terrorist Act, 1997 as amended from time to time; and
- (iii) The Anti Money Laundering Act, 2010 as amended from time to time.

4. Execution and Implementation of the Scheme

[u/s. 120B(4)]

For the purposes of execution and implementation of a scheme under this section besides Income Tax authorities, National Database and Registration Authority (NADRA) and banks shall also be authorised to,–

- (a) accept declaration;
- (b) accept registration tax;
- (c) issue receipts; and
- (d) issue NTN,

in accordance with the said scheme.

5. Claim for Adjustment of Tax already paid/Deducted Subject to Filing of Return

[u/s. 120B(5)]

Any claim for adjustment of tax already paid, collected or deducted under the Ordinance against the registration tax payable under sub-section (2), shall not be admissible unless regular return of income is filed by the taxpayer and in such case provisions of this section shall not apply.

6. Filing of Regular Return

[u/s. 120B(6)]

Tax payers availing the scheme made under sub-section (1) shall be obliged to file returns of income for the succeeding tax year and subsequent three consecutive tax years. If any taxpayer fails, without reasonable cause to file return for the succeeding tax year and the subsequent three consecutive years the immunities granted under sub-section (3) shall stand automatically withdrawn and action under Chapter VII, Parts I, II, IV, VIII, X, XI and XII of Chapter X of the Ordinance shall be taken notwithstanding any limitation prescribed under the Ordinance.

7. Appeal

[u/s. 120B(7)]

A “registered non-filer” and/or “un-registered non filer” having multiple bank accounts, or having undertaken foreign travel or living in expensive localities or owning immoveable assets who after receiving intimation from NADRA or from the Commissioner feels that he or she is not liable to pay registration tax under the scheme made under sub-section (1) may file an appeal in the appeal form annexed with the scheme with reasons

and basis and evidence of objection by the date provided in the scheme before the concerned Commissioner who shall dispose off the same within 20 days of its receipt after affording an opportunity of hearing.

8. In case Registration Tax is not Paid or Appeal not Filed, Finalization of assessment u/s. 122C

[u/s. 120B(8)]

Any person who does not opt to pay the registration tax required to be paid under the scheme made under sub-section (1) and does not file appeal before the concerned Commissioner in the time and the manner provided under sub-section (7) and the scheme or the appeal filed by him is rejected by the Commissioner, shall be liable to Finalization of provisional assessment under section 122C and all the provisions of the Ordinance shall apply accordingly. During the pendency of proceedings under section 122C and the resultant recovery proceedings the person shall, notwithstanding anything contained in any other law, be liable to suspension of his CNIC, placement of his name on the Exit Control List (ECL), freezing of his bank accounts and blocking of his mobile phone SIMs after being provided an opportunity of being heard.

9. Definitions

[u/s. 120B(9)]

- (i) "Declaration" means declaration made on the prescribed form annexed to the Scheme made under sub-section (1);
- (ii) "Declarant" means an individual or and AOP, who files declaration under the Scheme made under sub-section (1);
- (iii) "Exit Control List" means an exit control list maintained by the Federal Government in pursuance of an order made under sub-section (1) of section 2 of the Exit from Pakistan (Control) Ordinance 1981 (XLV of 1981);
- (iv) "Investment Tax" means investment tax as defined in section 120A(4)(ii) and an Investment Tax Scheme as announced by the Federal Board of Revenue;
- (v) "Registration Tax" means tax payable under the scheme under sub-section(1) and shall be deemed as tax as defined in clause (63) of section 2;
- (vi) "Registered non-filer" means any person who has been allotted an NTN and,-
 - (a) has not filed a return of income for three tax years out of any five completed tax years;
 - (b) has never filed a return of income; or
 - (c) has filed a return of income for any of the tax year prior to five completed tax years;
- (vii) Undisclosed income

“Undisclosed income” means any income/expenditure/ asset which was chargeable to tax but could not be so charged under Income Tax Ordinance, 2001, for any tax year(s) or assessment year(s) ended on or before 30th day of June, immediately preceding the tax year in which the scheme under sub-section (1) was made and includes deemed income under section 111 or any other deemed income under the Ordinance(s),

(viii) Unregistered non-filer

“Unregistered non-filer” means an individual who does not have an NTN or has never filed a return of income.”

FBR order recording the reasons to be passed within 45 days

(u/s. 120B)

The Board shall, within forty-five days of the receipt of the recommendations of the Committee, pass an order accepting the recommendations or rejecting the same after recording the reasons thereof in the aforesaid order.

NADRA

NADRA shall also be involved in the implementation of the scheme ie Investment Tax Scheme u/s. 120A and Tax Registration Scheme u/s. 120B.

International Customs Day observed

Model Collectorate Customs celebrated International Customs Day with great zeal and enthusiasm. The Collector Customs (Adjudication) Zahid Hussain Bhayo speaking on the occasion said that the information technology has turned the world into a global village. He claimed that with the change in customs rules and regulations, improvements in many aspects have been achieved.

Previously due to old rules the business community faced problems in importing goods, he said that now with the use of modern technology implementation of rules and regulation has become easy and the businessmen do get advantage of such facilities. He said this was positive development for carrying out trade within and outside world. On this occasion the Senior Vice President Hyderabad Chamber of Commerce and Industry Turab Ali Khoja representing the business community of the region while appreciating the services rendered by customs officials advised the business community to take advantage of Dry Port Hyderabad for carrying out their import and export activities as it will be cheaper for them. Moreover, more job opportunities will be created with their efforts.

He however, demanded from customs officials that modern scanning system be installed at Dry Port Hyderabad so that the containers of importers could be cleared without any delay. Khoja stressed that Khokhra Par border be opened for the bilateral trade with India so that it could be possible at cheaper rates for the business community of this region as they have to bear heavy expenses through Wagha border, thus it will be convenient for both the countries to carry out trade through Khokhra Par border.

Before this the Additional Collector Customs Khalid Hussain Jamali speaking on the occasion said that the staff of Model Collectorate Customs has been working day and night, their efforts and the co-operation of business community of this region, the Hyderabad Customs Collectorate has remained on the top in revenue collection. He said that they were able to collect Rs 5,700 million during the previous year which was much higher than the target fixed by FBR. This event was largely participated by the high officials of Customs Intelligence, Pakistan International Airlines and members from Hyderabad Chamber of Commerce and Industry such as former Vice President Ziauddin, Zulfiqar Chohan, Hamid Mehmood Nasir, Maqsood Ahmed Khan and others. – *Courtesy Business Recorder*

FBR indigenously develops sales tax IT system

The Federal Board of Revenue (FBR) indigenously developed sales tax IT system ie Computerised Risk-Based Evaluation of Sales Tax (Crest) will process all sales tax refund claims on the basis of data captured in sales tax returns and no separate CD would be required from registered person for processing of claim.

Sources told here on Sunday that the Crest has given new dimension to the whole scheme of processing of claims by checking and verification of supply chain to avert tax frauds with facilitation to the genuine registered units. The FBR has decided to process the sales tax refund claims through the data captured in the returns and for facilitation of the taxpayers no separate data will have to be submitted for refund claims.

Expressing full confidence in the new IT system, the FBR has been further decided that the centralised IT system shall process all types of sales tax refund claims which previously were processing only refund claims of exports in five zero-rated sectors. It has been further decided that the system shall conduct electronically audit of all refund claims already sanctioned and paid. This will save the refund claimant from unnecessary hassle of post-refund audit but will also plug the any chances of collusion between unscrupulous claimants and corrupt functionaries of the tax department. It has been also decided that after effective publicity campaign all those taxpayers status would be made non-operative who failed to respond to electronically transmitted discrepancy reports of the Crest.

Sources said that now the separate application for refund claim will not have to be submitted which previously done was done on CD by registered persons. After the induction of this IT system no individual alerts would be made as the system has in build capacity to block any fictitious refund claims. This will end the discretionary powers available with the FBR with regarding to blocking of refund claims. There will not be any hypothetical situation where there would be need to issue alerts as system operates around dynamics chains of in build alerts and checks. In one of such presentations, it was shown that a refund claimant filed claim for only Rs 1.7 million, the system clears only 60 percent of refund claim after evaluating 140 suppliers who were directly or indirectly transacted with the four main suppliers of the refund claimant. The system checks the nature of the business of the supplier, goods being exported and their point of destination.

After analysing/reviewing work of new home-grown IT system, the senior IR management decided to deploy the system at all the Regional Tax Offices and Large Taxpayer Units. While checking the stress management the third party IT experts expressed their satisfaction over the performance of the system. However, experts asked for creating a data warehouse where the said warehouse should check the repository of verified information of customs goods declaration and the all available electronically received information of income tax and sales tax, they added. – *Courtesy Business Recorder*

Amnesty scheme: FBR aims to bring 3.1 million into tax net, says Hakeem

Federal Board of Revenue (FBR) Chairman Ali Arshad Hakeem said on Saturday that tax amnesty scheme will be presented in the National Assembly under which, a person can get a national tax number by depositing Rs 40,000. However, from the next financial year the person getting national tax number under this amnesty scheme has to file his return regularly.

He said that the FBR had identified around 3.1 million such people who have travelled through air, keep more than one bank accounts and vehicles and those would be provided a chance to get themselves registered under the new tax amnesty scheme. He warned that the computerised national identity cards of those who don't pay their taxes on time would be blocked while their names would also be put on the Exit Control List (ECL). He was talking to media persons after inaugurating new Customs House building in Lahore. Hakeem also attended a function arranged to mark the "International Customs Day."

He said those identified would be given a 75 days time and after that, if not responded, their CNICs would be blocked and their names would be put on ECL, so they could not travel or operate their accounts. FBR Chairman said that all the legislators pay tax on their salaries and also submit details of their other sources, if any, in their returns. He said we have a total population of 180 million but number of those who were paying taxes was very low. He also said that current revenue collection was not enough to run a big country like Pakistan.

Earlier, speaking at the function, Ali Arshad Hakeem said that the tax-to-GDP ratio has reached the level of 9.1 percent with great difficulty, adding taxation reforms are absolutely essential to

increase the tax base. He said that the FBR would make all out efforts to enhance tax base under the heads of corporate and under individuals. He said that the existing tax base or tax to GDP ratio was not enough to run a big country like Pakistan. He also stressed the need for changes in the FBR. He also urged the customs officers to leave no stone unturned for stopping smugglings as this menace not only ruin the industry but also the national economy.

He said that the FBR had asked the government to provide more manpower for stopping the smuggling. He said FBR foundation was being made functional while promotions in the Board are also being made wherever they are due. He expressed the hope that tax collection target for the current fiscal would be achieved. Senior Officers of the Federal Board of Revenue (FBR) both Inland Revenue Services and Customs attended the function. – *Courtesy Business Recorder*

Dedicated unit of DGI&I IR Khyber Pakhtunkhwa: 360,000 fake sticks of cigarettes seized in January

The dedicated Unit of the Directorate General of Intelligence and Investigation Inland Revenue (IR) Federal Board of Revenue at Khyber Pakhtunkhawa has seized 360,000 counterfeit and smuggled sticks of cigarettes during January 2013.

Sources told here on Monday that the KP-based dedicated unit has seized 90,000 sticks of counterfeit cigarettes with different brand names ie Gold Leaf, Morven Gold and Capstan etc on January 15. The non-duty paid smuggled cigarettes was also seized during the operation.

The agency seized 70,000 counterfeit cigarettes on January 23. After a few days, the dedicated unit seized 200,000 sticks of counterfeit Morven Gold, Gold Leaf, Capstan and Red and White cigarettes on January 26. The dedicated intelligence unit of the KP has intensified its enforcement measures and recently made different seizures.

The DG Intelligence IR has established a dedicated unit in KP for drive against non-duty paid smuggled cigarettes from Peshawar and other areas of KP. The dedicated unit of the DG Intelligence IR has been equipped with necessary logistics and officials having ample experience of sales tax and federal excise. The

tobacco industry is mainly KP based and successful operation in the province would ensure continuation of the drive in the country.

The data revealed that the agency seized 480,000 cigarettes sticks of foreign counterfeit cigarettes including Pine; Enjoy; Hi-Lite; Marlboro and L&M from February-2012 to June 30, 2012. The value of non-duty paid cigarettes was Rs 762,000 involving Rs 696,468 revenue.

Summary of enforcement activities regarding illicit trade of cigarettes revealed that the directorate of intelligence IR has seized 890,000 cigarettes valuing Rs 1,385,000 since July 1, 2012 whereas, the amount of revenue involved was Rs 1,265,890. The foreign origin/counterfeit seized brands included Pine, Hi-Lite, Marlbro, Stanford, Oris Slim and Red & White (counterfeit). After seizures made in January 2013, the overall number of seizures has increased.

During the enforcement campaign, over 10 million non-duty paid cigarettes sticks were seized in 2011-12. In the history of Pakistan, this is the largest seizure of cigarettes sticks including local non-duty paid cigarettes, smuggled cigarettes and non-duty paid cigarettes coming from Kashmir to tariff areas of Pakistan and counterfeit cigarettes.

This is appreciable such a big seizure was made by the agency in a short span of less than one year. Out of 10 million seized cigarette's sticks, duties and taxes have been deposited on 6.5 million sticks. The recovery of taxes on such non-duty paid cigarettes has positive impact on the revenue. The seized smuggled cigarettes included 570,000 sticks of pine cigarettes; 100,000 sticks of Japanese cigarette, ie, hi-lite; 30,000 sticks of Marlboro and 490,000 sticks of cigarettes manufactured in Azad Kashmir. –
Courtesy Business Recorder

Payment of advance tax by banking companies: SRO.561(1)2012 declared unlawful by FTO

Federal Tax Ombudsman (FTO) Dr Muhammad Shoaib Suddle has declared SRO.561(1)2012 on payment of advance tax by banking companies as unlawful and directed the Federal Board of Revenue to amend the above SRO bringing it in conformity with the provisions of section 147(6) of Income Tax Ordinance, 2001.

The FTO issued an order here on Monday on the payment of advance tax by banks, accepting the legal arguments presented by
2013

Syed Naveed Andrabi, Advocate, authorised representative (AR) of M/s United Bank Limited Islamabad. In complaint No 80/ISD/IT (50)/939/2012, the FTO observed that the introduction of an SRO that has the effect of amending the statute being contrary to law tantamount to maladministration.

The FTO said that the SRO.561 (1)2012 has superseded the provisions of section 147 of the Income Tax Ordinance. SRO 561(1)2012 has amended the Seventh Schedule of Income Tax Ordinance 2001. Whereas section 147(6) allows a taxpayer with an estimated income less than the previous year to pay advance tax on the basis of such estimation, in equal instalments on such dates, as have not expired the SRO replaces this beneficial provision and instead fixes June 15 for payment of 50 percent of the estimated tax in case it is likely to be more than the amount required to be paid, Dr Shoaib Suddle added.

Details revealed that the complainant, a banking company, is aggrieved with the issuance of SRO 561(1) 2012 dated 24-05-2012 by the FBR. It is the complainant's contention that amendments in Rule 5(1) and Rule 5(1A) of the Seventh Schedule of the Income Tax Ordinance 2001 (the Ordinance) have been introduced to wrongly deprive the bank from the benefits confirmed by Section 147(4-A) and 147(6) of the Ordinance.

The AR submitted that the SRO had been issued with mala fide intention. Its purpose was to extract excessive advance tax arbitrarily just to meet budgetary targets. The SRO had also taken away the Complainant's right to offer lower estimated income under section 147(6) of the Ordinance. The SRO was issued on May 24, 2012, fixing June 15, 2012 as the cut-off date for computing advance tax liability. This meant that only data of the first quarter was available to the taxpayer and the department for arriving at an advance tax figure. He finally argued that subordinate legislation could not supersede the provisions of the statute and cited several rulings to support this proposition.

The departmental representative (DR) submitted that the impugned SRO only harmonised the procedure for payment of advance tax. The banking companies were paying advance tax even prior to the introduction of the SRO. The SRO required them, to pay advance tax if their income was likely to exceed that of the previous year's comparable period. No mala fide was involved. The amendments brought about through the SRO were within the ambit of the law. The SRO was not repugnant to the statute. He

also contended that the complaint did not fall within the purview of Section 2(3) of the FTO Ordinance.

The FTO said that the contentions of both sides have been heard and documents perused. Written submissions have also been minutely examined. The FTO said that it is obvious that the impugned SRO has superseded the provisions of section 147 of the Ordinance. Whereas section 147(6) allows a taxpayer with an estimated income less than the previous year to pay advance tax on the basis of such estimation in equal instalments on such dates as have not expired the SRO replaces this beneficial provision and instead fixes June 15 for payment of 50 percent of the estimated tax in case it is likely to be more than the amount required to be paid under sub-rule (1).

The FTO stated that the law is clear and established on this issue. An SRO cannot amend or alter a substantive section of a statute. The tax department has contended that the FTO cannot embark upon interpretation of law. The issue here is that the Department has taken an action, ie, amendment of a statutory provision through an SRO in utter violation of established law and has thus committed maladministration as defined under section 2(3) of the FTO Ordinance. The FTO has investigated a complaint about an action that is clearly contrary to established law, and has not in any way tried to interpret the law, FTO said. The FTO recommended the FBR to ensure that SRO.561(1)2012 is appropriately amended to bring it in conformity with the provisions of section 147(6) of the Income Tax Ordinance 2001 and report compliance within 30 days. – *Courtesy Business Recorder*

Smuggling of falcons effectively controlled?

The smuggling of rare-breed falcons to United Arab Emirates (UAE) through Arabian Sea is said to have been effectively controlled through vigilant anti-smuggling operations by Model Customs Collectorate (MCC), Gwadar.

Sources told on Monday that reports about the incidents have been submitted to the Federal Board of Revenue. Collector MCC Gwadar has taken special measures to control smuggling particularly of falcons through sea route. Several attempts have been made to smuggle falcons in the past, therefore surveillance and monitoring of sea and land routes has been actively increased by anti-smuggling squads with the help of other relevant departments.

The Customs Marine Section of Model Customs Collectorate (MCC) Gwadar has foiled a major attempt to smuggle 13 falcons worth millions of rupees to UAE. These falcons were being smuggled to UAE through Arabian Sea, but the squad nabbed the smugglers near Jiwani. Recently, six falcons were seized by the collectorate whereas three falcons were seized earlier at Turbat Airport.

In few weeks, the number of seized falcons has gone to 22 due to effective anti-smuggling operations by the department. The recent seizures made through anti-smuggling operations have shown decrease in illicit trade of falcons. The MCC has activated its Marine Sections at Jiwani Customs Station and Marine Section of Gwadar which were dormant in the past. The Jiwani Customs Station has intercepted different boats/vessels and foiled attempts to smuggle falcons to UAE. Jiwani is a far flung area within territorial jurisdiction of MCC Gwadar.

On January 26, destruction of liquor and narcotics was done by the MCC Gwadar. The international customs day was celebrated at MCC Gwadar which destroyed a huge quantity of liquor and narcotics at Customs House Gaddani. The destroyed items included charas 5.8 metric tons, heroin 8.2 kgs, liquor 421 bottles and 240 cans of beer and other items.

The MCC Gwadar has launched a large-scale operation against smugglers of Iranian goods particularly petroleum products across the coastal jurisdiction of Pak-Iran border and seized Iranian petrol/diesel along with carriers of smuggled products. With effective anti-smuggling measures at Pak-Iran border, the revenue collection from Iranian imports has doubled during the last six months. The anti-smuggling operation near border area of Iran has increased the documented imports with increase in duties and taxes during the last six months.

The customs authorities at Gwadar have started patrolling and checking border area near Iran with the help of anti-smuggling squads of customs and intercepted several vehicles carrying Iranian POL products. According to sources, most of the smugglers use sea route to smuggle POL products from Iran to Pakistan. Hence, the customs officials are focusing on territorial jurisdiction of sea to check smuggling of Iranian products. The Board has given anti-smuggling powers to MCC Gwadar to check smuggling at the coastal areas of Balochistan. – *Courtesy Business Recorder*

FBR to drastically reduce number of concessionary SROs

The Federal Board of Revenue (FBR) will take a major tax policy measure to drastically reduce the number of concessionary Statutory Regulatory Orders (SROs) regarding customs duty and allow reduced rates/duties under Pakistan Customs Tariff (PCT) to end disputes related to interpretation of SROs.

Sources told here on Monday that at present the effective rate of customs duty is around 5 percent. There are certain exemptions and concessions of customs duty which are available in the SROs as well as under the PCT. The availability of the tariff concessions under the PCT would end the disputes on calculation of customs duty through interpretation of SROs. Secondly, it will bring simplification in the customs duty regime.

The issue of concessionary regime of customs duty available under SROs was also discussed during the last meeting of Tax Reforms Co-ordination Group (TRCG) held with Federal Minister for Finance Dr Abdul Hafeez Shaikh in the chair at the FBR House to discuss proposals for upcoming Federal Budget 2013.

According to sources, it is a reform initiative to reduce the number of SROs allowing customs duty concessions and exemptions. There are SROs which also provide industry specific concessionary/reduced rates of customs duty. As a policy measure, the FBR wanted to reduce the number of such SROs. The exemptions and concessions available under the SROs would be shifted to the PCT so that the reduced rates will be available under standard tariff regime. Instead of giving concessions through the SROs, it would be more appropriate to bring all such concessionary items under the relevant headings of the Pakistan Customs Tariff. It is worth mentioning that the customs duty related notifications caused an accumulative loss of Rs 91.588 billion in 2011-2012 against Rs 94.941 billion in 2010-2011.

Customs exemptions are given on raw materials and components; plant, machinery and equipment imported by the high-tech, priority and value added industries; imports for energy sector projects and exemption to exploration and production companies. Some of these exemptions are due to international contractual obligations. Under the Customs law, exemptions or concessions are granted to goods that are imported into Pakistan through SROs, special classification in Chapter 99 of Pakistan Customs Tariff, and/or through specific rate of tariff. On the basis of these

provisions, the tax expenditure in respect of Customs Duty was calculated at Rs 91.588 billion for 2011-12.

The concession of customs duty on goods imported from Saarc and ECO countries caused revenue loss to the tune of Rs 0.055 billion in 2011-2012 against Rs 0.073 billion in 2010-2011. The customs duty exemption on the imports from Sri Lanka resulted in revenue loss of Rs 0.196 billion against Rs 0.148 billion. The customs duty exemption on the imports from China under SRO.1296(I)/2006 of caused revenue loss of Rs 0.0002 billion during 2011-2012 against Rs 0.031 billion in 2010-2011. The customs duty exemption on the imports from Iran under Pak-Iran PTA caused loss of Rs 0.0009 billion against Rs 0.004 billion. The customs duty exemption on the imports under the SAFTA agreement caused revenue loss of Rs 0.151 billion during 2011-2012 against Rs 0.116 billion in 2010-2011. The exemption of customs duty on the imports from China under another SRO.659(I)/2007 resulted in revenue loss of Rs 13.762 billion in 2011-2012 against Rs 10.867 billion during 2010-2011. The customs duty exemption on the imports from Malaysia caused revenue loss to the tune of Rs 2.750 billion during 2011-2012 against Rs 2.895 billion in same period previous fiscal.

The conditional exemption of customs duty on import of raw materials and components etc for manufacture of different sectors resulted in revenue loss of Rs 7.391 billion in 2011-2012 against Rs 4.653 billion during the corresponding period last fiscal. The general and conditional exemption of customs duty under SRO.567(I)/2006 cost revenue loss of Rs 21.830 billion in 2011-2012 against Rs 30.277 billion in 2010-2011.

Similarly, exemption of customs duty and sales tax on the import of machinery, equipment and vehicles by the Exploration and Production (E&P) companies (SRO.678(I)/2004) caused a loss of Rs 2.810 billion against Rs 2.581 billion in the same period last fiscal.

The concession of customs duty on the import of machinery, equipment and apparatus resulted in revenue loss of Rs 9.833 billion during 2011-2012 against Rs 13.712 billion during 2010-2011 during the same period last fiscal. The exemption of customs duty for vendors of automotive sector caused revenue loss of Rs 12.851 billion during 2011-2012 against Rs 9.315 billion in the corresponding period of last fiscal.

The exemption of customs duty for OEMs of automotive sector caused revenue loss of Rs 19.196 billion during 2011-2012 against Rs 19.073 billion in 2010-2011. The exemption of customs duty on

the import of machinery and equipment by industrial units registered with the Ministry of Textile Industry caused revenue loss of Rs 0.756 billion against Rs 1.196 billion in 20102-11. –
Courtesy Business Recorder

Subsidy to honest taxpayers: FBR agrees to MQM proposal

The Federal Board of Revenue (FBR) has agreed to a proposal of Muttahida Qaumi Movement (MQM) to give subsidy to honest/compliant taxpayers from estimated amount of over Rs 100 billion to be collected through the proposed Tax Registration Enforcement Initiative and Investment Tax Scheme.

Sources told on Tuesday that the issue of some sort of subsidy to the honest taxpayers was discussed during a briefing of FBR to 25 parliamentarians of MQM including certain Members National Assembly, Senate, Members Finance Committee, Member Provincial Assembly and economic experts of the party.

The FBR team of experts including Samad Khurram, an IT specialist of the FBR and FBR Chief Inland Revenue Policy, Dr Muhammad Iqbal gave detailed presentation to MQM on the proposed schemes of the FBR and their revenue impact on the economy. The overall presentation was very positive and convinced the party about the benefits of the scheme towards documentation of economy. Dr Iqbal and Samad promptly responded to different queries of MQM economic experts and explained the proposed strategy for the documentation of economy.

During the briefing, Dr Farooq Sattar, Deputy Convenor and parliamentary leader of MQM said honest taxpayers should be given subsidy from the amount to be collected from the proposed Tax Registration Enforcement Initiative and Investment Tax Scheme. A certain percentage may be fixed for giving subsidy to honest taxpayers from the said schemes. The FBR officials responded that the definition of honest taxpayer and details of the recommendation be forwarded to the FBR for consideration.

However, tax officials agreed in principle to the proposal of Dr Farooq Sattar to give some kind of subsidy to the honest and compliant taxpayers. The issue of agriculture income and future return filing was also discussed during the briefing of the FBR. The tax officials said the persons who would avail the scheme would be required to file returns in future. If someone would

declare agriculture income, the same would be verified from provinces.

Sources said that few more meetings would also take place to address the issues raised by MQM regarding the proposed schemes. The FBR officials said a significant segment of Pakistan's economy is undocumented. The growing size of the underground economy is not only depriving the exchequer of its due share but is also hindering economic planning and development. A large number of businesses and individuals who are regularly filing their income tax returns are avoiding their legal obligations by either under-declaring or not correctly declaring their assets and income.

On the other hand, a large number of businesses and individuals who are required to be registered with the FBR and to regularly file their income tax returns are avoiding their legal obligations. The FBR along with Nadra has data about the multiple bank accounts, travels, assets and other details of these non-filers. Based on this data two tax incentive schemes are being proposed by the FBR. The past attempts by FBR to register them failed as the FBR's field units unfortunately compromised the data.

Sources said the Tax Registration Enforcement Initiative has been devised to make an attempt through a simple scheme which will be administered through banks along with Nadra under proposed section 120B of Income Tax Ordinance 2001 to register and bring into tax net these non-filers of tax returns. A fixed tax is proposed and provides cover to undeclared income/assets upto Rs 5 million.

Investment Tax Scheme would provide a mechanism and cover to regular filers in addition to non-filers of income tax returns to declare undeclared income assets/expenditure up to the value of Rs 5 million on payment of token tax and additional assets/income on payment of investment tax as per proposed slab. The scheme will be administered through establishing special counters with the help of banks along with Nadra, sources said.

Both the schemes may not be taken as a safety net for those who have not complied with tax laws but will provide buoyancy to the national economy and deepen and broaden the tax base. The persons availing the schemes shall also have immunity under the National Accountability Ordinance, 1999, Federal Investigation Agency Act, 1974, Companies Ordinance 1984 and Foreign Exchange Ordinance, 2002. These schemes have been fine-tuned

based on discussions and feedbacks from tax bar associations and trade bodies and the field units. – *Courtesy Business Recorder*

Violation of LHC verdict: FBR asks field formations to initiate audit process

In a clear violation of Lahore High Court (LHC) verdict, the Federal Board of Revenue (FBR) has directed its field formation to initiate the audit process; it is learnt here on Tuesday. According to sources, the board in its letter dated January 17, 2013 directed all chief commissioners of Inland Revenue to exercise powers to conduct audit as per section 177, 25 and 46 of Income Tax Ordinance, 2001, Sales Tax Act 1990 and Federal Excise Act 2005, respectively.

They further said the FBR had also ordered to consider its earlier letter dated December 7, 2012 as withdrawn ab initio. The sources said the board in its letter dated December 7, 2012 restrained its field formation for selecting cases for audit and termed the said act as contrary to its policy.

Now, the board after reconsideration is of the view that Commissioner Inland Revenue possesses inherent powers to conduct audit as per relevant sections of the laws, despite the recent judgement of LHC to initiate the audit process afresh and set aside all audit notices issued for tax year 2011, the sources maintained.

According to the guidelines issued by LHC, the FBR in terms of section 214C of the Income Tax Ordinance, 2001, section 72B of the Sales Tax Act, 1990 and section 42B of the Federal Excise Act, 2005, shall frame three separate sets of parameters for selection of cases for audit under the existing tax laws.

“The board shall also publicise the parameters settled in accordance with the court directives for the concerned tax year prior to the selection of cases for audit in order to facilitate taxpayers.” The court in its judgement directed the FBR to issue separate notices under separate tax laws and clearly specify the respective parameters to make the process transparent.

The judgement further said that the entire audit process was being initiated afresh and the FBR would also proceed in framing the parameters for selection of audit strictly in accordance with the existing laws. Meanwhile, Karachi Tax Bar Association (KTBA) in its letter sent to chairman FBR complained that the

commissioners from LTU and RTOs were asking to make compliance of the pending cases already either manually selected for audit under section 177 of the Income Tax Ordinance, 2001 by the commissioners or selected through random balloting which has already been quashed by LHC for the Tax Year 2010 and 2011, respectively.

The KTBA said the officers were misinterpreting the instructions issued by the FBR and had started issuing illegal notices with a direction to comply to the pending proceedings and asking to submit and produce books of accounts and other details and documents in respect of the same which is not only alarming but appears to be based on misunderstanding of law.

The bar termed the board's directives issued through letter dated January 17, 2013 as illegal, saying that the said instructions were totally incorrect as the same were to be read with section 214C of the Income Tax Ordinance, 2001 where the law and procedure of "SELECTION" has been stipulated. Therefore, the KTBA considers the said instructions devoid of law and is being misused by the commissioners Inland Revenue at LTU and RTOs in Karachi.

"This is tantamount to harassment which was not expected to be done either by the commissioners or the FBR. The word "select" has also been removed from section 120 (IA) of Income Tax Ordinance, 2001 vide Finance Act, 2010," the bar said. Furthermore, the KTBA said the law in this regard was very clear, that by virtue of induction of section 214C of the Income Tax Ordinance, 2001 through Finance Act, 2010 power to select the case for audit only lies with the board.

"This contention and plea has been very well dealt with and decided in favour of the taxpayer in the recent detailed judgement of the LHC vide case No W.P.No 393/2012 heard on May 10, 2012 that the section 177 of the Income Tax Ordinance, 2001 was subservient to section 214C of the Income Tax Ordinance, 2001. Therefore, the substantive power to select a person for audit is provided in section 214C and the machinery provision providing procedure for conducting the audit is in section 177."

"The taxpayer will first be selected for audit under section 214C by the FBR and only then the Commissioner will conduct its audit in accordance with procedure given in section 177." The KTBA said it had already been decided that the first proviso to section 177(I) of the Income tax Ordinance, 2001 was inherently discriminatory as

it violated article 25 and articles 10A, 18 and 23 of the constitution besides being inconsistent to the scheme of the Ordinance.

The first proviso to section 177(1) of the Ordinance cannot be read down, however, it can be severed from the statute in order to protect the legislative theme behind the Ordinance and to maintain the constitutionality of the remaining statute. For the above reasons, first proviso to section 177(1) of the Ordinance was struck down as being unconstitutional and illegal. With this declaration the second proviso to section 177(1) becomes practically redundant and ineffective.

The bar further said the representative of the board arrived at the consensus before the LHC to frame three separate sets of parameters for selection of cases for audit under section 214C of the Income Tax Ordinance, 2001, section 72B of the Sales tax Act, 1990 and section 42B of the Federal Excise Act, 2005. Therefore, the KTBA has requested the chairman FBR to look into the matter to facilitate the taxpayers at maximum. – *Courtesy Business Recorder*

Tax evasion: individual possessing two CNICs identified by Nadra

An individual of Rawalpindi has duplicate personal identity with two different computerised national identity card numbers (CNICs) having entirely different particulars to commit tax evasion and frauds. Sources told here on Tuesday that National and Database Registration Authority (Nadra) has confirmed the tax department about the possession of two CNICs by a single individual.

A comparison of two CNICs revealed that same picture of individual could be seen on both the CNICs having different names, father name and date of birth. The permanent addresses on both the CNICs are the same. However, Nadra record verified that both the ID cards are of the same person. This is a unique case as one individual is using two CNICs to commit tax evasion.

The question arises why a person is maintaining two different CNICs? He is a non-filer and his companies are in huge loss. He is making negligible tax payments. If one CNIC is used for banking transactions, the same bank account could easily be hidden from tax department. The second CNIC could be presented to the tax

department showing actual business transactions with the bank account being operated under the first CNIC.

When contacted, sources in the Regional Tax Office Abbottabad confirmed that the RTO is investigating a detailed report of the Directorate of Intelligence and Investigation Inland Revenue (IR). The agency's report has been received by the RTO and further investigation is under way. According to sources, during routine exercise of "Fiscal Intelligence" directorate of intelligence IR came across a case which involves massive tax evasion, gross misstatement of facts, deliberate suppression of purchase value of assets, and above all duplicate personal identity. The subject individual holds two different CNICs with entirely different identifiable particulars. Nadra's record confirms the fact. This single individual is simultaneously holding two CNICs, ie, CINC 37405-6381716-1 and the other CNIC 61101-1925985-1.

Tax profile of the individual revealed that he is one of the directors of a steel re-rolling mill in Hattar, Abbottabad. The unit is being assessed by RTO Abbottabad. The income tax returns available reflect that it is a loss declaring unit. Tax profile of the individual in question also reflects that apart from Steel Re-Rolling Mills Hattar, he is proprietor of another steel unit in Hattar as well. It is an AOP being run by the said individual. He himself is though on the Tax Roll, but as per FBR's portal he is a non-filer.

On August 24, 2007 the said individual, in open bid, offered the price of Rs 110 million to a bank for purchase of assets which was accepted and On August 27, 2007 acceptance of his offer was communicated along with terms of payments. On January 28, 2008 the said property was registered at Rs 10.200 million meaning thereby, an amount Rs 99.800 million has been suppressed/concealed for transfer/tax purposes.

Sources said that later on during 2008 the said property was dismantled, stores/scrap/materials and land have been separately disposed of pocketing profit of Rs 125 million. Purchase and sale of the said asset has not been declared anywhere in tax record because he himself is a non-filer and company's balance sheet is completely silent about both acquisition as well as disposal.

The aforesaid picture clearly reflects the following dimensions: Firstly, irreconcilable duplicate personal identity needs thorough probe because it can be misused for defrauding Tax department. Secondly, purchase of an industrial unit by a non-filer itself speaks volumes about the nature and magnitude of tax evasion.

Thirdly, while declared business is suffering from loss, the wealth of sponsor director is multiplying without any incidence of tax. Fourthly, through gross suppression of purchase price all federal/provincial/local transfer taxes (including CVT) are being evaded. Fifthly, the profit earned on a business asset has not been offered for taxation. As the untaxed profits of steel business are being used for investment therefore the cases of a Steel Re-Rolling Mill and a steel unit may be earmarked for composite/investigative audit. Profit earned on sale of a commercial asset may be taxed in the relevant Tax Year, sources in RTO Abbottabad added. –
Courtesy Business Recorder

Provisional release of imported goods: FBR legally bound to decide all cases

The Federal Board of Revenue is legally bound to decide all the cases of provisional release of imported consignments in favour of importers under Customs Act 1969 provided disputes are not finally settled within six months. Sources told here on Tuesday that the FBR has repeatedly issued instructions to the Collectors of Customs Model Customs Collectorates (MCCs) for finalisation of cases of provisional assessment under section 81 of the Customs Act 1969.

The Collectors have to finalise all such cases within the specified time period to avert huge losses to the exchequer. At present, a large number of cases of provisional releases against financial securities are pending with the collectorates involving revenue to the tune of billions. The provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or post-dated cheque.

Details revealed that the customs department allows provisional release of imported consignments against submission of financial securities like bank guarantees, pay orders and post-dated cheques etc of the differential amount of duties and taxes. There are different tax disputes between importers and department due to valuation issues, interpretation of SROs and assessment of duties and taxes on imported goods. The provisional clearance of imported goods has to be subsequently regularised for settlement of issues. Till resolution of disputes, customs department allows provisional release of imported goods under section 81 of the Customs Act 1969. Legally, the issue has to be settled within the specified period of three months, otherwise cases have to be

decided in favour of importers. If dispute has not been resolved within the given time period of three months, the view point of applicants or importers would prevail.

According to section 81 of the Customs Act, where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself about the correctness of the assessment of the goods, customs official may order that the duty, taxes and other charges payable on such goods, be determined provisionally. Provided that the importer will pay such additional amount on the basis of provisional assessment or furnishes bank guarantee, pay order or a post-dated cheque of a scheduled bank along with an indemnity bond for the payment of differential between the final determination of duty over the amount determined provisionally.

Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within six months of the date of provisional determination. On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be. If the final determination is not made with the period specified, the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination. On completion of final determination, the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be, Customs Act added. – *Courtesy Business Recorder*

No raise in FED rates: FBR rejects two leading cigarette makers' demand

The Federal Board of Revenue has outrightly rejected the demand of two cigarette manufacturing giants for not enhancing the Federal Excise Duty (FED) rates as per existing slabs on cigarettes till the next budget. Sources told here on Tuesday that the legal experts of two multinational cigarette manufacturing companies visited FBR House on January 28 to meet tax officials on the issue of the FED slabs revision under the Federal Excise Act, 2005.

The representatives of multinational companies met the senior FBR officials and made a presentation on overall market,
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smuggling and revenue impact of existing FED slabs for various brands of cigarettes. Two companies tried to convince the Board for not increasing the incidence of FED on cigarettes prior to budget. During the meeting, tax authorities remained committed to enhance the rate of the FED on cigarettes and rejected arguments of the leading manufactures. Tax authorities have not agreed with the viewpoint of multinational companies. The experts of the multinational companies may visit the FBR to again present their case before the tax authorities.

It is important to mention here that a Presidential Ordinance would be required to amend the Federal Excise Act, 2005 for clubbing middle tier slab of FED on cigarettes with higher tier slab. By combining two slabs, a new slab would be proposed to cover all brands of cigarettes under the middle tier slab and higher tier slab of the FED.

The revised slabs would force the cigarette manufactures to collect enhanced amount of the FED from various brands in middle slab matching the higher slab. The proposal is expected to generate around Rs 4-5 billion in the remaining period of 2012-13. If the federal government agrees with the proposal, Presidential Ordinance would be promulgated to amend the First Schedule of the Federal Excise Act, 2005 for revision of the FED slabs for cigarettes. – *Courtesy Business Recorder*

Cellphones, gold, silver, raw materials: FBR plans to enhance WHT rates to five percent

The Federal Board of Revenue is planning to enhance withholding tax rates from existing 1-3 percent to five percent on the import of mobile phone sets, gold, silver, raw materials/inputs of industrial units/manufactures and fabrics/yarn imported by sales tax zero-rated sectors to generate an additional Rs 20 billion.

Sources told here on Wednesday that the FBR is drafting Statutory Regularity Orders (SROs) to revise withholding tax regime at the import stage. The FBR has identified all items at which reduced rates of withholding tax would be replaced with a standard rate of 5 percent through SROs. Other notifications are being drafted to revamp sales tax zero-rating regime. Taxation measures under consideration are estimated to generate Rs 40-50 billion to overcome revenue shortfall in second half (January-June) of 2012-13.

The estimated revenue impact has been worked out at around Rs 20 billion from enhancement in rate of withholding tax on import of different items. Measures on sales tax and federal excise would generate additional Rs 20-25 billion. Sources said that the FBR has proposed enhancement in the rate of withholding tax from one percent to five percent on the import of mobile phone sets, gold and silver. Under Table-II of the Second Schedule of the Income Tax Ordinance 2001, tax under section 148 of the Ordinance 2001 on mobile phone sets, gold and silver shall be collected at the rate of one percent of their import value as increased by customs-duty, sales tax and federal excise duty, if any levied thereon.

The existing withholding tax rate on the import of raw materials and inputs of the industrial undertaking would be increased from 3 to 5 percent, reflecting an increase of 2 percent. As per Second Schedule of the Income Tax Ordinance 2001, tax under section 148 of the Ordinance 2001 has been collected at the rate of 3 percent on the import value of raw material imported by an industrial undertaking for its own use.

The one percent withholding tax would be enhanced to five percent on import of goods, fabrics and yarn etc by sales tax zero-rated sectors including textile, leather, surgical, carpets and sports. As per Table-II of the Second Schedule of the Income Tax Ordinance 2001, the tax under section 148 of the Ordinance 2001 has been collected at the rate of one percent on import of all fibres, yarns and fabrics and goods covered by the zero-rating regime of the sales tax notified by FBR.

At present there is no withholding tax on the imports of trading houses. It has been proposed to impose a standard rate of 5 percent withholding tax on imports by the trading houses. The FBR will also raise incidence of the federal excise duty (FED) on cigarettes to generate additional revenue of Rs 4-5 billion.

The sales tax zero-rating may remain on the import of inputs, but domestic zero-rating would be replaced by normal standard rate regime. If the proposal is approved, the FBR will have to amend the SRO.1125(I)/2011. Another proposal is to restore "further tax" on supplies made to unregistered persons. In this way, the FBR will impose sales tax on supplies made to un-registered individuals as well as units. The measure is expected to generate around Rs 3 billion.

Tax Reforms Co-ordination Group (TRCG) has reportedly proposed abolition of Presumptive Tax Regime on import, export and trade

along with interest income and rent to introduce adjustable withholding tax on these categories of income. The TRCG has also proposed that the final tax regime should be converted into adjustable withholding tax on five categories of income, ie import, export and trade, interest income and rent under relevant provisions of the Income Tax Ordinance 2001.

TRCG has also reportedly proposed to the Ministry of Finance to abolish sales tax zero-rating at domestic stage to remove a major distortion in the value added tax (VAT) regime. TRCG also reportedly agreed to the proposal of the FBR to revise FED slabs on cigarettes to increase duty collection. – *Courtesy Business Recorder*

NLC board approves development of Wagha Border Terminal

The Board meeting of National Logistic Cell (NLC) presided over by the Finance Minister Dr Abdul Hafeez Shiekh approved the development of Wagha Border Terminal to facilitate trade between Pakistan and India. The 52nd meeting of NLC Board also approved the purchase of additional scanners for installation at Waga Border to accelerate trade between Pakistan and India.

The co-operation between FBR and NLC to facilitate transit trade was also approved by the board. The board approved the induction of prime mover in NLC fleet. The board appreciated and approved establishment of support facilities by NLC in various cities across the country including Hyderabad, Kohat and PunnoAqil. The meeting also acknowledged services of outgoing Director General NLC, Major General Junaid Rehmat. The Finance Minister said that NLC achieved new standards of professional under the leadership of outgoing Director General. Dr Abdul Hafeez Shaikh praised the management of NLC for performing strategic tasks assigned by the government without claiming budgetary allocation from government. – *Courtesy Business Recorder*

Joint ventures, non-resident AOPs: Anomaly in Circular 1 of 2013 (International taxes) removed

The Federal Board of Revenue has removed an anomaly in the Circular 1 of 2013 (international taxes) wherein the scope of taxation under section 153 of the Income Tax Ordinance, 2001 has been elaborated for non-resident Association of Persons (AOPs)

and Joint Ventures (JVs). The FBR has issued income tax circular 2 of 2013 here on Wednesday.

According to Circular 2 of 2013, the Circular No 1 of 2013, dated January 18, 2013 was issued to regulate and standardise tax treatment of joint ventures in which one of the partners is a non-resident person. The Board has been notified of an important omission in the text of the aforementioned circular. Accordingly, the words “clauses (a) and (b) of Section 153 of the Income Tax Ordinance, 2001” inadvertently appearing in line No 4 of para 2 of Circular No 01 of 2013, dated January 18, 2013, are replaced with words “under Sub-section (1) of Section 153 of the Income Tax Ordinance, 2001”. Rest of Circular No 01 of 2013 holds good in entirety, FBR added.

Interpreting the new circular, tax expert explained that the tax deducted under section 153(1) of the Income Tax Ordinance, 2001, on receipt of Pakistan source income of JV/AOP in which one partner is a non-resident person shall be final discharge of tax liability as per Section 169 of the Ordinance on account of sale of good, rendering of or providing of service and execution of contract. Federal Board of Revenue (FBR) has issued Circular number 2 of 2013 here on Wednesday (amendment in Circular 01 of 2013) in order to remove the anomalies in the recently issued Circular 1 of 2013 (international taxes), he added.

In this respect a Lahore-based tax lawyer Waheed Shahzad Butt of Tax Resolution Services Company has wrote a letter to the Chairman FBR pointing out certain inadvertent omissions in the text of Circular which needs to be rectified, ie, mention of clauses (a) and (b) of section 153 and final taxation u/s 153(a) and (b). As per tax expert, correct text should be “section 153(1)(a) and 153(1)(b) of the Income Tax Ordinance and tax deducted u/s 153(1)(b) of the Ordinance shall be treated as “Minimum Tax Liability” instead of “Final Tax”. In view of the anomalies, the issue may result into unavoidable litigation.

Tax expert told that though FBR has rectified the apparent anomalies in the said circular, however, a technical issue remained unattended in the Circular 02 of 2013. The modified version of the Circular shall be read as “income of JVs in which one partner is a non-resident person under all circumstances is to be assessed in the capacity of an AOP as per clear provisions of Section 92 of the Income Tax Ordinance, 2001 and the income of the AOP is liable to tax and the tax deducted under sub-section (1) of Section 153 of the

Income Tax Ordinance, 2001, on receipt of Pakistan source income of AOP is final discharge of tax liability as per Section 169 of the Ordinance”.

Expert further opined that the amendments made vide Finance Act, 2009, in section 153 of the Ordinance, modify the provisions of second proviso to sub-section (6) to the effect that henceforth the services rendered stand excluded from the ambit of final tax regime and tax deducted u/s 153(1)(b) is to be treated as ‘Minimum Tax Liability’ instead of “Final tax liability”. Previously, such services remained subject to final tax liability. The taxpayers having receipts chargeable to tax u/s 153(1)(b) of the Ordinance shall be charged to tax at least at Minimum Tax Regime and income tax already deducted u/s 153(1)(b) of the Ordinance shall be treated as minimum tax liability, wef, Tax Year 2010 in the hands of recipient taxpayer. Meaning thereby if income tax liability computed against net income arising out of such receipts exceeds the quantum of tax already deducted u/s 153(1)(b), then a taxpayer shall pay the difference of income tax at the time of submission of annual income tax return, otherwise, the tax already deducted shall be treated as minimum tax liability against such receipts and there will be no refund against such tax deduction.

It is neither adjustable against any other income liable to tax under normal tax regime nor it is refundable even there is loss. Therefore, the opinion of the FBR that tax deducted under section 153(1)(b) of the Income Tax Ordinance, 2001, on receipt of Pakistan source income of AOP is final discharge of tax liability as per Section 169 of the Ordinance, needs to be rectified, being not in line with the clear provisions of the Income Tax Ordinance, 2001. –
Courtesy Business Recorder

FBR to finalise three separate sets of audit parameters

The Federal Board of Revenue has decided to chalk out three separate sets of parameters under Income Tax Ordinance 2001, Sales Tax Act 1990 and Federal Excise Act 2005 to select audit cases. Sources told here on Wednesday that the FBR has finalised a new audit policy for carrying out audit of sales tax, income tax and federal excise duty (FED).

The FBR will separately select sales tax, federal excise duty and income tax cases for audit. The FBR will finalise separate audit parameters of sales tax, income tax and FED on the basis of new audit policy approved by FBR Chairman Ali Arshad Hakim.

Official said that the selection of audit cases was done through balloting on November 13, 2012 in presence of stakeholders. However, a number of taxpayers approached Lahore High Court against the said selection. The Lahore High Court after hearing the arguments of both parties set aside the audit selection and directed the authorities to initiate the selection afresh on following guidelines:

Firstly, the FBR has to frame three separate sets of parameters under the three tax laws. Secondly, if the FBR wishes to carry out risk analysis, the same may be done separately under each tax law. Thirdly, a day or so prior to the selection of cases, FBR shall publicise the parameters through print media and FBR's website. Fourthly, separate notices to be issued under separate tax laws, specifying the parameters.

Fifthly, the FBR should consider establishing a review panel to address issues arising out of audit selection. Sixthly, the FBR should look into "Delegation of Powers" through Member (Audit) in terms of section 214C, 72B, and 42B, of the three laws along with Section 3, of FBR Act, 2007.

Keeping in view these guidelines of the Lahore High Court, the FBR has decided that the FBR Taxpayer's Audit Wing would immediately proceed in the matter in accordance with the judgement of the court. Moreover, three set of parameters should be designed after careful consideration and proper homework by the FBR. For selection of cases for audit under section 214C, 72B & 42B of the Income Tax Ordinance 2001, Sales Tax Act 1990 and Federal Excise Act 2005 respectively in the light of guidelines given by the Lahore High Court, Member (Audit) is empowered by the Board to take necessary steps in this regard and submit audit plan/criteria for the approval of the Board, official added.

The FBR had selected 1,217 corporate taxpayers and 8,523 non-corporate taxpayers for income tax, sales tax and federal excise audit of Tax year 2011 through parametric computer balloting. The selection of approximately 15 percent of returns filed in Large Taxpayer Units (LTUs), 5 percent of returns filed by corporate and 2 percent of returns filed by non-corporate taxpayers in RTOs was made. Out of total 22,204 returns received from the corporate sector for Tax Year 2011, a total of 1,217 cases were selected for audit. Out of 519,974 returns filed by the non-corporate persons, a total of 8,523 cases were selected for audit. – *Courtesy Business Recorder*

Shahid Anwar posted as chief commissioner IR

Shahid Anwar Khan, BS-21 officer of Inland Revenue Service, presently posted as Director General (WHT), Federal Board of Revenue (Hq), Islamabad, has been transferred and posted as Chief Commissioner Inland Revenue , Large Taxpayers Unit (LTU), Islamabad, with immediate effect and until further orders. In this connection, the FBR has issued a notification here on Wednesday. – *Courtesy Business Recorder*

APTT Rules: procedure for submission of Cross Border Certificate unveiled

The Federal Board of Revenue has issued procedure for submission of Cross Border Certificate (CBC) by importers for the transit of consignments under the Afghanistan-Pakistan Transit Trade Rules. According to the amended Customs Rules, 2001 issued here on Thursday through a notification, in case the goods are imported at sea port, the Customs administration at the office of departure shall send a copy to the office en route in Pakistan (Torkham or Chaman) which shall be handed over to Afghan Customs at the border.

The Afghan Customs shall send the goods declaration (GD) back to the office of departure in Karachi through the respective border Customs stations (Torkham or Chaman on the Pakistani side) along with copy of T-1 issued and attested by Afghan Customs bearing cross reference of GD filed in Pakistan, and a certificate to the effect that the consignment mentioned in the relevant T-1 form has crossed the Customs checkpost or station Samarkhel (Jalalabad) in case of transit through Torkham, and Spin Boldak in case of transit through Chaman. This shall be considered as Cross Border Certificate (CBC) and on the basis of which Customs shall release, after due process, the customs security.

Through another amendment in the Customs Rules, 2001, in case the goods are imported at sea port, the Customs administration at the office of departure shall send a copy to the office en route in Pakistan (Torkham or Chaman) which shall be handed over to Afghan Customs at the border. The Afghan Customs shall sent the GD back to the office of departure in Karachi through the respective Customs station (Torkham or Chaman on the Pakistani side) along with copy of T-1 issued and attested by Afghan Customs bearing cross reference of GD filed in Pakistan, and a certificate to the effect that the consignment mentioned in the

relevant T-1 form has crossed the Customs checkpost or station Samarkhel (Jalalabad) in case of transit through Torkham, and Spin Boldak in case of transit through Chaman. This shall be considered, as Cross Border Certificate (CBC) and on the basis of which Customs shall release, after due process, the Customs security. The duplicate copy of GD shall be submitted in the above manner within sixty days extendable by another thirty days by the Additional Collector of Customs concerned, after recording reasons in writing, amended rules said.

In case the goods are imported through sea port, the GD (duplicate copy) sent back by Afghanistan to the office of departure in Karachi through the respective Customs stations (Torkham or Chaman on the Pakistani side) along with copy of T-1 issued and attested by Afghan Customs bearing cross referencing of GD filed in Pakistan and a certificate to the effect that the consignment mentioned in the relevant form has crossed the Customs checkpost or station Samarkhel (Jalalabad) in case of transit through Torkham and Spin Boldak in case of transit through Chaman, amended rules added. – *Courtesy Business Recorder*

Closure of Rs 3.5 billion plant: Prime Minister secretariat seeks immediate comments from FBR

Concerned over the closure of Rs 3.5 billion Astro Plastics (Pvt) Ltd, pioneer manufacturers of BOPET film plant in Pakistan, Prime Minister's secretariat has "urgently" sought Chairman, Federal Board of Revenue's comments in the matter.

Responding to M/s Astro Plastics complaint sent to the Prime Minister on high rate of duty on bottle grade PET resin, Joint Secretary, Prime Minister's secretariat, Dr Rashid Manzoor, in view of the gravity of the situation and to stall wrong signal going to prospective foreign and local investors, in a "most immediate" note to the Chairman, FBR sent on January 28 requested that: "comments in the matter may kindly be furnished to this secretariat urgently through return fax today."

Earlier, Minister of State, Ministry of Finance, Senator Saleem H Mandviwalla, in a letter sent on January 23 to Chairman, FBR Ali Arshad Hakeem and Secretary, Ministry of Industries, Shafqat Hussain Naghmi had requested them to hold further action in the duty structure of the polyester chain, keeping in view the policy note issued by Competition Commission of Pakistan (CCP).

HE HAD ASKED TO PROVIDE:

- All copies of detailed minutes of the committee headed by the Secretary Industries.
- Name of the members of original committee and its mandate/TOR.
- Minutes of all the meetings on the subject matter under the auspicious of FBR and its recommendations.
- Details of working and study done by FBR.
- Report made by the NTC along with all the workings, rational and the date it was submitted, and
- Details of the working of the “policy note” issued by FBR and NTC by the CCP on the said subject.

Minutes of the meeting of the committee constituted by the Finance Minister for determining import duty structure on Biaxially Oriented Ployethylene Terephthalate (BOPET) resin and firming up recommendations thereon makes an interesting reading. The meeting was held under the chairmanship of Secretary, Ministry of Industries on January 7 where representative of National Tariff Commission (NTC) informed that it has submitted its report on December 27, 2012 with their recommendations. The committee was of the view that since NTC is a specialised body in the matter so its recommendations may be given due weightage and considered.

Unbelievable indeed? Additional Secretary Finance Division, Aftab Anwar Baloch and Chairman, FBR both members of the committee informed that they did not receive the NTC report but despite that on assurance of Director General, NTC, Khizar Hayat that the recommendations would be forwarded to them, the committee recommended to adopt NTC recommendations which had proposed 8 percent custom duty on bottle grade PET resin from existing 9 percent., which is the main bone of contention and is being agitated by stakeholders. They want the custom duty reduced to 3 percent to provide level playing field to all the manufacturers instead of protecting the interests of Novatex being the sole manufacturer of PET resin in Pakistan. The protection provided to them offers immense pricing power at the expense of downstream industries. Novatex produces raw materials that are given special high duty protection which allows them to unfairly under cut their competitors in the downstream business, according to Astro Plastics.

VIEWPOINTS ON THE SUBJECT OF INDUSTRIAL UNITS:

Astro Plastics (Pvt) Ltd - Astro Plastics (Pvt) Ltd, a manufacturer of BOPET film, is a wholly owned subsidiary of Ismail Industries Group and is honoured to be the pioneer of BOPET film manufacturing in Pakistan. The company has to import PET resin on which it has to pay 20 percent duty which is not rationalised. On the other hand, Krystofilms uses the PET resin produced by its sister concern Novatex.

Novatex Ltd, is a manufacturer of PET resin. Its sister concern GATRON Industries Ltd is a manufacturer of PFY, PET performs and BOPET films. The company is of the view that domestic industry in Pakistan produced three types of films, ie, CCP, BOPP and BOPET film. The custom duty on CCP and BOPP films is 20 percent and raw material for these films is PP resin which is not produced in Pakistan but still custom duty on import of it is 5 percent. Protection to domestic industry manufacturing CPP and BOPP film is 15 percent.

Fine Star Industries (Pvt) Ltd is a manufacturer of PET Bottles. It is of the view that the current level of import duty of PET resin (bottle grade) is 9 percent which is encumbering the growth of downstream PET performs, bottle and packing industry. Increased duty on PET resin (bottle grade) is acting as an undue advantage and an unwarranted extra manufacturer-specific profit margin for Novatex as it is the only producer of PET resin.

Roshan Packages (Pvt) Ltd is a printing unit and consumer of PET film importable against H.S. Codes 3920.6200, Biaxially Oriented Poly Propylene (BOPP) film under H.S.Code 3920.2010 and metalised BOPP film under 3920.2030. It has stated that local BOPP, metalised BOPP, CPP and metalised CPP film producer has insufficient production capacity and consumer facing scarcity of the basic raw material required for printing.

Pakistan Plastic Manufacturers Association is of the opinion that custom duty on PET film grade and bottle grade to be brought down to 3 percent, ie, equal to textile grade.

ICI Pakistan has a concern that any increase in tariff on PET resin should not come at Polyester Staple Fibre. Much to the disenchantment of several stakeholders and in total disregard to the observations made by the Competition Commission of Pakistan on the monopoly enjoyed by a particular manufacturer, NTC in its report had recommended custom duty at 8 percent for bottle grade PET resin. Though, interestingly in one its observations NTC had

stated in its recommendations that the existing industry manufacturing PET resin is well established as compared to BOPET film industry. "There should be minimum duty on PET resin which could protect its cost of production in longer run."

While the recently established Rs 3.5 billion Astro Plastics plant has already been closed down, several other manufacturers, who could see same fate staring on them, smell a rat in NTC recommendations and strongly feel that unless custom duty is reduced to 3 percent, they will be out of business sooner than expected. – *Courtesy Business Recorder*

Transit goods to India via Wagha: letter of guarantee by Afghan ministry a must

Pakistan will only allow Afghan trucks carrying fresh or dry fruit up to Wagha through land route for transit to India on production of letter of guarantee by Ministry of Transport and Civil Aviation, Afghanistan to ensure timely return of such vehicles. In this connection, the FBR has amended Customs Rules, 2001 through SRO.22(1)/2013 issued here on Thursday.

The FBR had allowed transit from Afghanistan to India through land route Wagha under the Customs Rules. This has also permitted movement of Afghan transit goods from Afghanistan to India through Wagha. According to the notification, Afghan trucks carrying fresh or dry fruit up to Wagha shall be allowed entry in accordance with these rules, subject to the production of letter of guarantee, in each case, by the Ministry of Transport and Civil Aviation, Government of Afghanistan to the effect that the vehicles would return to Afghanistan within the stipulated time.

Under existing rules, Afghan based importer of goods or his authorised Customs clearing agents, brokers or transport operator in Pakistan shall furnish Customs security in the form of insurance guarantee from an insurance company of repute, acceptable to Customs, in the prescribed form (Appendix-II) which shall be valid for at least one year and shall be encashable in Pakistan, for ensuring the fulfilment of any obligation arising out of Customs transit operation between Pakistan and Afghanistan.

The amount of Customs security for transit operation shall be determined by the AO and Principal Appraiser of the office of departure (Customs port of entry) so that it covers all import levies, including but not limited to Customs duty, regulatory duty,

Sales Tax, additional sales tax, federal excise duty, income tax etc, and any other import levy chargeable on goods so carried.

In case of transport units registered in Afghanistan, carrying transit goods, the transport operator or his authorised Customs clearing agents, or the concerned chamber of commerce or the concerned Government department shall lodge a bank guarantee (Appendix-III) or revolving bank guarantee from a scheduled bank, acceptable to Customs equivalent to twenty five per cent of the amount of duty and taxes leviable thereon, which shall be valid for at least one year and shall be encashable in Pakistan:

Provided that in case a transport operator desires to operate less than four transport units, he shall provide a bank guarantee of hundred per cent of the amount of duty and taxes leviable on each transport unit. Provided further that if a transport unit does not return to Afghanistan as per the provisions of this chapter the bank guarantee shall be encashed for the full amount of duties and taxes leviable on that transport unit, customs rules added. –

Courtesy Business Recorder

July-January (2012-2013): 6.8 percent increase in provisional collection

The Federal Board of Revenue (FBR) has provisionally collected Rs 1,003.433 billion during July-January (2012-2013) against Rs 939.866 billion in the same period last fiscal, reflecting an increase of 6.8 percent. Sources told here on Thursday that the FBR has compiled provisional revenue collection figures during first seven months of 2012-2013.

The net collection stood at Rs 1,003.433 billion during period under review against Rs 939.866 billion. The monthly provisional collection in January 2013 was Rs 114.459 billion against Rs 99.129 billion in the same period last January, showing an increase of 15.5 percent.

Despite slowdown of economy and law and order situation in Karachi, FBR team of tax managers including Senior Member Tax Policy Asrar Raouf and FBR Member Inland Revenue Muhammad Raza Baqir are fully committed to chase the ambitious revenue collection target (2012-13) with effective enforcement and documentation in remaining period of current fiscal. These are provisional figures and collection is expected to increase on compilation of final figures.

Break-up of revenue collection revealed that the collection of domestic taxes ie direct taxes, sales tax and federal excise duty was Rs 880.476 billion during July-January (2012-2013) against Rs 831.564 billion in the corresponding period last fiscal, reflecting a net increase of 5.9 percent.

Direct taxes collection was Rs 366.188 billion during July-January (2012-2013) against Rs 335.798 billion in the same period last fiscal, reflecting an increase of 9.1 percent. Within the direct taxes, collection of withholding taxes stood at Rs 50.937 billion during the period under review against Rs 48.690 billion in same period last fiscal.

Sales tax collection was Rs 454.889 billion during July-January (2012-2013) against Rs 433.353 billion in the corresponding period of last fiscal, showing a growth of 5 percent. Sales tax collection at the import stage was Rs 241.539 billion during July-January (2012-2013) against Rs 242.236 billion in the same period last fiscal. Sales tax collection at domestic (local) stage was Rs 213.350 billion during this period against Rs 191.117 billion in the same period last fiscal.

The collection of federal excise duty was Rs 59.399 billion during July-January (2012-2013) against Rs 62.413 billion in the same period last fiscal, reflecting a decrease of 4.8 percent. The collection of customs duty was Rs 122.957 billion during July-January (2012-2013) against Rs 108.302 billion in the corresponding period of last fiscal, showing an increase of 6.8 percent. The data added that the FBR has paid refund and rebate of Rs 51.596 billion during the period under review against Rs 97.277 billion, showing a decrease of 47 percent. – *Courtesy Business Recorder*

ST and FED matters: FBR Member IR Operations fully empowered

The Federal Board of Revenue has empowered FBR Member Inland Revenue Operations to exclusively deal with the sales tax and Federal Excise Duty (FED) matters without referring matters to the FBR Member IR-Policy. In this regard, the FBR has issued a circular on Thursday to clearly define powers of the FBR Member Inland Revenue Operations.

According to the circular, in order to simplify and accelerate the pace of disposal of files and other matters relating to Inland

Revenue, the Chairman FBR has approved the following procedure to be followed with immediate effect and until further orders:–

Firstly, all files and correspondence of Inland Revenue Wing relating to any issue or aspect will be submitted by the concerned Chiefs in FBR (HQ) and field formations to the Member (IR Operations).

Secondly, files involving direct taxes matters may be forwarded by Member (IR Operations) to Senior Member (IR-Policy), if so required. Thirdly, files connected with sales tax and Federal Excise Duty matters will be disposed off at the level of Member (IR Operations) or submitted by him directly to the Chairman, FBR, as the case may be. Fourthly, correspondence relating to Legal/FTO, DRRRA matters etc will be made by the concerned wings eg Legal Wing, Accounting Wing, Enforcement Wing directly with the respective field formations without routing the same through IR Wing to avoid waste of time and stationery. – *Courtesy Business Recorder*

FBR re-designates two as Deputy Chairmen

The Federal Board of Revenue (FBR) has appointed senior most FBR Members Shahid Rahim Sheikh (PCS/BS-22) of Pakistan Customs Service (PCS) and Malik Abdul Samad (BS-22) of Inland Revenue Service (IRS) as Deputy Chairmen FBR with immediate effect. In this regard, the FBR has issued a notification on Thursday.

Sources said that the two senior most FBR Members have been appointed as Deputy Chairman FBR to meet the revenue target set for 2012-10213. The government has already given assignment of FBR Member IR Operations to Raza Baqir who is working day and night to ensure achievement of target at national level.

The notification says, in pursuance of decision of Board-in-Council during its last meeting, two posts of Member BS-22 (one for Pakistan Customs Service and one for Inland Revenue Service) are re-designated as Deputy Chairman with immediate effect. The following Members (BS-22) FBR are posted as Deputy Chairmen FBR with immediate effect and until further orders: Shahid Rahim Sheikh (PCS/BS-22) and Malik Abdul Samad (IRS/BS-22).

In pursuance of the Board`s Notification, Shahid Rahim Sheikh BS-22 officer of Pakistan Customs Service assumed the charge of the post of Deputy Chairman, Federal Board of Revenue,

Islamabad from January 30, 2013. Sources said that FBR Chairman Ali Arshad Hakim has already approved the appointment of two Deputy Chairman FBR. In this regard, two posts of BS-22 have been re-designated as Deputy Chairman. According to the tax authorities, since three officers of FBR have been promoted to BS-22, there is a need to recognise their enhanced status as well as utilise their services and experience. One of the Grade-22 officials has opted for the post of Director General Training Inland Revenue Lahore, whereas the other two have been adjusted in the FBR House, Islamabad. – *Courtesy Business Recorder*

Special Reward Rules-2013: cash awards for tax officials out of detected amount

The tax officials assigned mopping up cases of rich persons hiding under the layer of undocumented sector/informal economy would be rewarded in cash under the special Reward Rules-2013. Sources told here on Friday that the FBR has decided to pay cash rewards out of the detected amount to tax officials up to Chief Commissioners/Chief Collectors under proposed special Reward Rules.

The time bound reward scheme would be applicable till the end of current financial year. The purpose of special reward rules is to encourage tax officials to dig out cases in the undocumented sector, and process them for recovery of unpaid taxes. Based on the available data, tax officials would detect, process and recover due amount of taxes and can avail special rewards. This is first of its kind incentive of cash reward which would be available to the tax officials for documenting super-rich persons freely operating in informal economy, sources added. The Board-in-Council of the FBR has decided to frame special Reward Rules under which certain percentage of the tax amount detected shall be paid to officials/officers (up to Chief Commissioners/Chief Collectors) working in the field formations. The reward scheme, however, shall be valid till June 30, 2013. The Board has directed the Senior FBR Member IR-Policy to submit proposed Reward Rules for issuance.

The tax authorities have repeatedly assured that the 'super rich' 200,000 individuals won't be allowed to avail the Tax Registration Enforcement Initiative and Investment Tax Scheme. These super rich 200,000 individuals have no National Tax Numbers (NTNs).

The FBR cannot permit these super rich persons to pay only Rs 40,000 and come within the tax net. These persons have to pay the due amount of taxes as they are make highest expenditure in Pakistan, but not ready to even obtain the NTN. The FBR has separated these super rich persons from the total identified individuals. The notices would be served on them under the existing tax laws. These 'super rich' 200,000 individuals would have to pay due amount of taxes. This would give a clear and loud message across the country that if the FBR can register 200,000 'super rich' persons, the remaining rich and middle class persons cannot escape the documentation drive. Top 200,000 tax evaders would not be able to avail the scheme because of their higher revenue potential. Due to capacity constraints, the remaining 3 million un-registered persons would be offered amnesty scheme. – *Courtesy Business Recorder*

Bogus refunds: IR Audit Officer suspended

The Federal Board of Revenue has suspended Iqbal Ahmed Magsi, a (BS-17) Inland Revenue Audit Officer, Regional Tax Office Karachi for alleged involvement in issuance of bogus sales tax refunds. In this regard, the FBR has issued a notification here on Friday.

According to the notification, in exercise of powers conferred under Section 5(i) of the Government Servants (Efficiency & Discipline) Rules, 1973, the Competent Authority has placed Iqbal Ahmed Magsi, (BS-17) presently posted as Inland Revenue Audit Officer, Regional Tax Office, Karachi under suspension with immediate effect and until further orders. – *Courtesy Business Recorder*

Inspector RTO Multan reinstated: dismissal converted into reduction in timescale

The Federal Board of Revenue has converted Inspector, Regional Tax Office (RTO) Multan, Zafar Iqbal Alam's major penalty of dismissal from service into major penalty of "Reduction in timescale by three stages for a period of three years," and reinstated the official with immediate effect. In this regard, the FBR has issued a notification here on Friday.

According to the notification, on departmental appeal filed by Zafar Iqbal Alam, Ex-Inspector, RTO, Multan against major penalty of dismissal from service, Member (Admn) in his capacity

as Appellate Authority has observed that Authority imposed the major penalty upon the accused on the basis of inquiry report submitted by the inquiry officer wherein he held him responsible for purchase of land for TFC, Rajanpur. Whereas, It transpires from the record that in the presence of notified purchase committee Iqbal cannot be held responsible for the purchase of land for TFC, Rajanpur as he was not empowered/authority for this purpose.

Moreover, record also shows that neither he was authority nor authorised to act on behalf of the committee hence penalty imposed upon him is not justified and is too harsh. Accordingly the Member (Admn) being the Appellate Authority has converted the major penalty of dismissal from service imposed upon Inspector, RTO, Multan by the Authority into major penalty of “Reduction in timescale by three stages for a period of three years” and reinstate the official with immediate effect. The intervening period from the date of his dismissal, ie, June 30, 2012 to date may be treated as spent on duty. – *Courtesy Business Recorder*

F.No.1(14)Jurisdiction/2011-Vol-II/9512-RIslamabad, the 23rd January, 2013**ORDER**

In exercise of the powers conferred by Sub-Section (1) of Section 209 of the Income Tax Ordinance, 2001, Sections 30 and 31 of the Sales Tax Act, 1990 and Section 29 of the Federal Excise Act, 2005, the Federal Board of Revenue is pleased to transfer the jurisdiction over the case of M/s Krystopac Energy (Pvt) Ltd. (NTN 3760594-1, STRN 1700376059410), from Chief Commissioner Inland Revenue, RTO-II, Karachi to Chief Commissioner Inland Revenue, RTO, Quetta.

2. This order shall take immediate effect.

C.No.4(10)ST-L&P/2011-3405Islamabad, the 8th January, 2013**SALES TAX GENERAL ORDER NO. 02/2013**

Subject: **Amendment in STGO 07/2007 dated 13.09.2007 – Allowing facility of zero-rating on supply of electricity.**

In exercise of 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–,

- (a) against S.No. 137 in column (1), in column (4), after the figure “2606467670037” the figure “BL 002504” shall be **added**;
- (b) against S.No. 1191 in column (1), in column (4), after the figure “2406457478090” the figure “AP 064996” shall be **added**; and
- (c) after serial number 1314 in column (1) and the entries relating thereto in columns (2), (3) and (4), the following new serial numbers and the entries relating thereto shall be **added**, namely:–

S.#	Name of Unit	Registration No.	Consumer No.
1315	M/S Al Super Dyeing & Bleaching	1700845100328	AP 070898 AP 085356

F.No.3(56)(Int.Taxes)/1995

Islamabad, the 29th January, 2013**INCOME TAX CIRCULAR NO. 02/2013**

Subject: **Taxability of Joint Ventures in which one Partner is a Non-Resident Company – Amendment in Circular No. 01 of 2013.**

Circular No. 01 of 2013, dated January 18, 2013 was issued to regulate and standardize tax treatment of Joint Ventures in which one partner is a non-resident person. The Board has been notified of an important omission in the text of the aforementioned Circular.

2. Accordingly, the words “*clauses (a) and (b) of Section 153 of the Income Tax Ordinance, 2001*” inadvertently appearing in line No. 4 of Para 2 of Circular No. 01 of 2013, dated January, 18, 2013, are replaced with words “**under Sub-section (1) of Section 153 of the Income Tax Ordinance, 2001.**”

3. Rest of Circular No. 01 of 2013 holds good in entirety.

No.1(1)M-IR(Operations)/FBR/2013 Islamabad, the 31st January, 2013

CIRCULAR

In order to simplify and accelerate the pace of disposal of files and other matters relating to Inland Revenues, the Chairman, FBR has approved the following procedure to be followed with immediate effect and until further orders:–

- (i) All files and correspondence of Inland Revenue Wing relating to any issue or aspect will be submitted by the concerned Chiefs in FBR(HQ) and filed formations to the Member (IR Operations);
- (ii) Files involving DT matters may be forwarded by Member (IR Operations) to Senior Member (IR-Policy), if so required;
- (iii) Files connected with Sales Tax and Federal Excise Duty matters will be disposed off at the level of Member (IR Operations) or submitted by him directly to the Chairman, FBR, as the case may be;
- (iv) Correspondence relating to Legal/FTO, DRRA matters etc. will be made by the concerned wings e.g. Legal Wing, Accounting Wing, Enforcement Wing directly with the respective field formations without routing the same through IR Wing to avoid waste of time and stationery. Similarly field formations may also respond to such letters directly to the Wing from where such letters/correspondence is received.

2. The above directions are circulated for immediate compliance.

No.SRB-3-4/MTP/47/2012/8751 Islamabad, the 31st January, 2013

SINDH REVENUE BOARD CIRCULAR NO. 01/2013

Subject: **Cross Browser Compatibility of Taxpayers' Facilitation Portal "https://e.srb.gos.pk"**

Sindh Revenue Board is pleased to introduce cross-browser compatibility of taxpayers' facilitation portal <https://e.srb.gos.pk> for its taxpayers. The portal is now running on popular browsers like Microsoft Internet Explorer, Google Chrome, Mozilla Firefox, and Androids Browsers for Cell Phones, Tablets and hand-held devices, as well.

2. Taxpayers can get registered, file returns and create tax payment challans (PSIDs) using any of the popular Internet browsers that they have in their PCs, laptops, tablets, hand-held devices and cell phones.

SRB-3-4/1/2013, Karachi, the 31st January, 2013.– In exercise of the powers conferred by section 72 of the Sindh Sales Tax on Services Act, 2011 (Sindh Act No. XII of 2011), read with sections 5, 6, 9, 13, 26 and 75 thereof, the Sindh Revenue Board is pleased to direct that the following further amendments shall be made in the Sindh Sales Tax on Services Rules, 2011, namely:–

In the aforesaid Rules,–

1. In the preamble, for the figures and comma “9, 13”, the figures and commas “5,6,9,13,26” shall be substituted;
2. In rule 2, in sub-rule (1),–
 - (i) after clause v, the following new clause va shall be added, namely:–

“va. **“Caterer”**, by whatever name called, means any person who supplies or provides, either directly or indirectly, food, edible preparations, beverages or crockery or cutlery and similar ancillary articles or accoutrements at any place including a place provided by tenancy or otherwise.”;
 - (ii) for the existing clause number “va”, the new clause number “vb” shall be substituted.;
 - (iii) after clause x, the following new clause xa shall be added, namely:–

“xa. **“Input Tax”**, in relation to a registered person, means:–

- (i) the tax levied under the Sales Tax Act, 1990, on the goods supplied to or imported by the registered person; and
 - (ii) provincial sales tax levied on such of the services, under the sales tax enactments of the provinces in Pakistan and of Islamabad Capital Territory, as are received by the registered person.”;
- (iv) after clause xii, the following new clause xiia shall be added, namely:–
- “xiia. **“Output Tax”**, in relation to a registered person, means tax levied under this Act in relation to the services provided or rendered by the registered person.”;
3. In rule 14, after the rule number 14, the marginal heading **“Time and manner of payment of tax. ----”** shall be inserted;
4. In rule 15, after the rule number 15, the marginal heading **“Mention of number of Computerized National Identity Card. ----”** shall be inserted;
5. In rule 16, after the rule number 16, the marginal heading **“Requirement to file scanned attachment. ---”** shall be inserted;
6. In rule 29, after sub-rule (2), the following new sub-rule shall be inserted, namely:–
- “(2A) A service provider, providing or rendering taxable services, shall also maintain the following records in addition to those prescribed under section 26 of the Act:–
- (i) records of the invoices issued in terms of sub-rule (1);
 - (ii) records of daily POS (Point of Sale) closing report of all the cash registers of a service provider and its branches and outlets in Sindh;
 - (iii) records of goods and services purchased or received, showing the description, quantity and value of the goods and services, the name, address and registration number of the supplier or seller or service provider and the amount of the tax involved;
 - (iv) records (GDs and import invoices) of goods imported, showing the description, quantity and value of goods and the amount of tax involved;
 - (v) records of the documents (including Debit and Credit Notes), returns and statements prescribed under the Act or rules made thereunder;

- (vi) bank statements and the banking instruments in relation to payments made and payments received;
- (vii) utility bills for gas, electricity, water and telephones and other telecommunications services;
- (viii) lease deeds, lease agreements, tenancy agreements and rental agreements;
- (ix) franchise agreements including technical fee agreements or royalty agreements or distribution agreements or agency agreements;
- (x) invoice/bills issued or received in respect of franchise services and the instruments of payments made or received in relation thereto;
- (xi) contracts/agreements made about the provision or receipts of goods and services;
- (xii) details (e.g. name, NTN, CNIC, address, phone number, fax number, e-mail ID, etc.) of the service provider, approved/authorized by any person for providing or rendering (whether to the said person or to any other person or service recipient) catering services, advertisement services, stevedoring services, ship management services, customs agents services, contractual services and contractor services in jurisdictional area, building, premises or precincts of such person;
- (xiii) inventory record of the input goods or input services;
- (xiv) financial statements and annual accounts;
- (xv) records justifying apportionment of input tax made in terms of sub-rule (3) of rule 22; and
- (xvi) audit observations/audit reports received, if any, from any tax jurisdiction in Pakistan or from the Revenue Receipt Audit or Commercial Audit departments of the Auditor General of Pakistan.”;

7. In rule 36, ----

- (i) In clause (i), after the words and semi-colon “in the franchise agreement;”, the comma, words and colon “, whichever is higher:” shall be added and, thereafter, the following provisos shall be added, namely:—

“Provided that in such cases where no remittance or payment of franchise fee or technical fee or royalty is

made by the franchisee, the assessable value shall be the amount laid down in the franchise agreement:

Provided further that in such cases where there is no franchise agreement or in case where the franchise agreement does not require that remittance or payment of franchise fee or technical fee or royalty during any period or during a specified period, the assessable value, except for the first one year from the date of commencement of the franchise or the date of initial franchise agreement, as the case may be, shall be an amount equal to 10% of the turnover of the franchised goods or services of the franchisee for the tax period for which the tax is payable;” and

- (ii) in clause (iii), for the words “net sales of the franchisee”, the words “turnover of the franchised goods or services of the franchisee for the tax period for which the tax is payable” shall be substituted; and

8. In rule 42, –

- (i) in sub-rule (1), in clause (a), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:–

“Provided that the aforesaid threshold of total annual turnover exceeding rupees 3.6 million per annum shall not apply in case of following categories of restaurants and caterers:–

- (i) restaurants which are air-conditioned on any day in a financial year;
- (ii) restaurants and caterers located within the building, premises or precincts of any hotel, motel, guest house or club whose services are liable to sales tax;
- (iii) restaurants and caterers providing or rendering services in the building, premises, precincts, hall or lawn of any hotel, motel, guesthouse or club whose services are liable to sales tax;
- (iv) restaurants and caterers which are franchisers or franchisees;
- (v) restaurants and caterers having branches or more than one outlet in Sindh; or

- (vi) restaurants and caterers whose total utility bills (gas, electricity and telephone) exceed Rs. 40,000/= in any month during a financial year.”;
- (ii) for sub-rule (3), the following shall be substituted, namely:–
 “(3) Every registered person shall submit the monthly tax return and make the payment of the tax due in the manner and by the due date as prescribed in rules 13 and 14:
 Provided that in respect of services provided or rendered by clubs, the due date for deposit of the tax due shall be the fifteenth day of the second month following the month in which services were provided or rendered by the club and the club shall also file the prescribed tax return within three days of the due date for the payment of the tax.”; and
- (iii) in sub-rule (6B), for the word “month”, the words “second month” shall be substituted.

Islamabad, the 29th January, 2013

**The Chairman
 Federal Board of Revenue
 Islaabad**

**SELECTION & PROCEEDINGS OF CASES FOR AUDIT
INSTRUCTIONS OF INHERENT POWERS ISSUED BY FBR
TO CONDUCT AUDIT II/S 177, 25 AND 46 OF THE INCOME TAX
ORDINANCE, 2001, SALES TAX ACT, 1990 AND FEDERAL
EXCISE ACT, 2005 RESPECTIVELY**

This is with reference to the letter issued by the “Taxpayers Audit Wing” Federal Board of Revenue, Islamabad to all the Chief Commissioners of Large Taxpayers Units and the Regional Tax Offices all over the Country vide its Letter reference C.No.1 (150) TPA-II (ballot-2011) /2012/6784-R Islamabad dated the 17th January, 2013. Through this letter, earlier letter reference C.No.1 (150) TPA-11 (Ballot-2011)/2012/157125-R, Islamabad dated the 7th December, 2012 has been rescinded.

We wish to place on record that we, at the Bar are, once again regularly receiving repeated complaints from our members that the Commissioners from LTU and RTOs are asking to make compliance of the pending cases already either Manually Selected for Audit u/s 177 of the Income Tax Ordinance, 2001 by the Commissioners or Selected

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through Random Balloting which has already been quashed by the Honorable High Court Lahore for the Tax Year 2010 and 2011 respectively.

The Officers are misinterpreting the instructions issued by the FBR and have started issuing illegal notices with a directions to comply to the pending proceedings and asking to submit and produce books of accounts and other details and documents in respect of the same which is not only alarming but appears to be based on mis-understanding of law.

We, The Karachi Tax Bar Association and the tax fraternity place our resentment that the above instructions dated 17-01-2013 are not only contrary to the Spirit and the Law on the subject but have created unnecessary confusion amongst the taxpayers and the tax collectors of the Country when the **issue of “Selection” and to “Conduct”** audit had already been threshed out by the Honorable Superior Courts of the Country.

We, The Karachi Tax Bar Association have always agitated and raised our grievances in writing before the Federal Board of Revenue on different occasions in respect to follow Law on the subject, but it is unfortunate that not a single reply has yet been given to the Bar to facilitate the taxpayer of the Country which is a matter of record and a deep concern for the Bar.

We again submit that, in our opinion, the above referred Instructions as issued vide Letter reference C.No.I(150) TPA-II (ballot-2011)/2012/6784-R Islamabad dated the 17th January, 2013 by the Federal Board of Revenue under the signatures of Mr. Majid Qureshi, Chief Taxpayers Audit only pertain to **“CONDUCT AUDIT”** of which we have no cavil and the same are being wrongly interpreted by the Department showing that the Commissioners are now authorized to select cases for audit but the fact and law is different. The said instruction with regard to rescinding earlier instructions is ab initio illegal. The said instructions are totally incorrect as the same are to be read with Section 214C of the Income Tax Ordinance, 2001 where the law and procedure of **“SELECTION”** has been stipulated, therefore, Our Bar considers above referred instructions devoid of law and is being misused by the Commissioners/Officers Inland Revenue at LTU and RTOs of Karachi. This tantamount to harassment which cannot be done and is not expected to be done either by the Commissioners including filed officer or Federal Board of Revenue. The word “select” has also been removed from Section 120 (1A) of Income Tax Ordinance, 2001 vide Finance Act, 2010.

We reiterate, as your good self will appreciate the fact and law on the subject is very clear, that by virtue of induction of Section 214C of the
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Income Tax Ordinance, 2001 through Finance Act, 2010 power to select the case for Audit only lies with the Board. This contention and plea has been very well dealt with and decided in favour of the taxpayer in the **latest detailed judgment of the Honorable High Court of Lahore vide Case No.W.P.No.393/2012 heard on 10.05.2012 that Section 177 of the Income Tax Ordinance, 2001 is subservient to section 214C of the Income Tax Ordinance, 2001.** therefore, the substantive power to select a person for audit is provided in section 214C, and the machinery provision providing procedure for conducting the audit is in section 177. The taxpayer will first be selected for audit under section 214C by the Federal Board of Revenue and only then would the Commissioner conduct its audit in accordance with procedure given in section 177.

It has already been decided above that as far as the first proviso to Section 177(1) of the Income tax Ordinance, 2001 is concerned the same is, inherently discriminatory, hence violate article 25 and articles 10A, 18 and 23 of the Constitution besides being inconsistent to the scheme of the Ordinance. The first proviso to section 177(1) of the Ordinance cannot be read down, however, it can be severed from the statute in order to protect the legislative theme behind the Ordinance and to maintain the constitutionality of the remaining statute. For the above reasons, first proviso to section 177(1) of the Ordinance was struck down as being unconstitutional and illegal. With this declaration the second proviso to section 177(1) becomes practically redundant and ineffective.

It is also a fact that subsequently the issue of **SELECTION of Composite Audit** under the three Tax Laws of the Country i.e. The Income Tax Ordinance, 2001, the Sales Tax Act 1990 and the Federal Excise Act, 2005 has also been very well dealt with by the Honorable High Court Lahore in its judgment Case No.WP NO.30786/2012, hearing dated 26.12.2012, 27.12.2012 and 28.12 2012 namely;

**M/s Premier Industrial Chemical manufacturing Co.
Versus
Commissioner Inland Revenue Etc.**

(copy enclosed for a ready reference)

It may brought on record that the representative of the Federal Board of Revenue arrived at the consensus before the Hon'ble Court, which are being reproduced for convenience and ready reference as under:

1. **The Federal Board of Revenue in terms of Section 214C of the Income Tax Ordinance, 2001, Section 72B of the Sales tax Act, 1990 and Section 42B of the federal Excise**

Act, 2005 shall frame three separate Sets of Parameters for Selection of cases for Audit under the three Laws.

- 2. That after the Selection Process has been carried out independently under three laws, if the Federal Board of Revenue wishes to further narrow down the Selection through Carrying out risk analysis (as already done in these cases) the same may be done separately under each law.**

It is evident from the Order that the counsel of the respondent i.e FBR assured the court that the entire Audit Process is being initiated **AFRESH** in the light of the guidelines and fully comply with the law of Selection under section 214C of the Income Tax Ordinance, 2001, Section 72B of the Sales Tax Act, 1990 and Section 42B of the Federal Excise Act, 2005 accordingly. Hence the FBR letter 17-01-2013 is in clear violation of assurance given before The Hon'ble High Court.

We most humbly submit that confusion in respect of Selection and Conduct of affairs of a Taxpayer are two different and distinct matters and it is now high time that intervention from your good self is eminent. The above confusion has made the operation of the Income Tax Ordinance 2001 as non functional which is not only affecting the Taxpayers but also the tax Collectors.

It is pertinent to mention here that we at the Bar always assisted the FBR alongwith our members in implementing the correct Law and therefore we are not against "Audit" as the Law is supreme and one cannot ignore or misinterpret the Law and therefore, it is requested that your good self may kindly declare the instructions regarding rescinding of earlier letter C.No.l(150) TPA-II (ballot-2011)/2012/6784-R Islamabad dated the 17th January, 2013 as illegal and issue proper instructions to abide by the consensus met before the Hon'ble Court and same may be published to show the transparency and bona fide.

Your kind indulgence and prompt action in this regard will be highly appreciated. This requires an urgent attention.

Munawwar H. Shaikh
President
