

Workers Welfare Fund Payment

(WWF Ordinance, 1971 & Sindh WWF Act, 2014)

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Index

- **The Worker's Welfare Fund Ordinance, 1971**
- **Supreme Court of Pakistan Judgment dated November 10, 2016**
- **Eighteenth Amendment to the Constitution - WWF**
- **The Sindh Workers Welfare Fund Act, 2014**
- **Deductible Allowance under Section 60A of the Income Tax Ordinance, 2001**
- **Supreme Court Order: SSGC & Others vs Federation of Pakistan & Others**
- **Appellate Tribunal, SRB Order on SWWF**

STATUTES GOVERNING WWF IN PAKISTAN

- ❑ **The Workers' Welfare Fund Ordinance, 1971**
- ❑ **The Sindh Workers Welfare Fund Act, 2014**
- ❑ **The Punjab Workers Welfare Fund Act, 2019**
- ❑ **The Balochistan Workers Welfare Fund Act, 2022**

JURISDICTIONAL HISTORY

- WWF was basically Federal law which was governed through the Workers' Welfare Fund Ordinance, 1971 as per omitted Entry No.26 of the Concurrent Legislative List of the Constitution of Pakistan.

“Entry 26. Welfare of labor; conditions of labor, provident funds; employer’s liability and workmen’s compensation, health insurance including invalidity pensions, old age pensions.”

THE WORKERS' WELFARE FUND ORDINANCE, 1971 (WWF ORDINANCE)

- Applicable to an industrial establishment having total income not less than Rs.100,000 in a tax year, and engaged in –
 - ❑ Factories and workshops involved in manufacturing, processing, or production using various source of energy;
 - ❑ any concern working in mine or quarry or natural gas or oilfield;
 - ❑ any concern engaged in the carriage of men and goods by inland mechanically propelled vessels;
 - ❑ any concern engaged in the growing of tea, coffee, rubber or cinchona;

The Finance Acts of 2006 and 2008:

- I. Expanded the scope of the WWF Ordinance 1971 (WWF Ordinance) whereby the term 'Industrial Establishment' was broadened to include establishments covered under the **West Pakistan Shops and Establishment Ordinance, 1969** as well.
- II. Change in definition of the taxable income where after, the charge of 2% WWF was to be made on the higher of Taxable or Accounting Income, instead.
- III. Exporters and importer and all other taxpayers whose income fall under Presumptive or Final Tax Regime were also made liable to pay for 2% WWF on a notional taxable income of 4% of their receipts

LIST of THE PERSONS INCLUDED

We understand that it is vital to list down at least an inclusive list of those broad groups of persons / taxpayers to whom were made subject to the payment of WWF after the amendments of 2006 and 2008.

1. IT Sector, HR Companies
2. Distributor, Dealer and Wholesaler
3. Telecommunication Companies
4. Insurance and Banking Companies
5. Asset Management Companies
6. Advertising Sector, TV and Radio Channels
7. Travel Agencies and Real Estate Agencies
8. Management Consulting Companies
9. Accounting and Audit Firms
10. Hospitals, Maternity Home and Doctors Clinics
11. Hotels, Motel, Cafe and Restaurants
12. Universities, Colleges and Schools
13. Manufacturer with Income subject to Final Tax Regime & Tax Losses
14. Other service organizations falling under the Shops & Establishment Ord. 1969.

LITIGATION ON SUCH AMENDMENTS

These amendments were challenged in three (03) different High Courts on the legal and technical question that as to whether “the WWF liability is Tax or Fee”? If the WWF is not a Tax and is actually a Fee then the amendments made therein along with the amendments made in Tax Law at the time of Annual Budget were fundamentally illegal and are to be considered Null and Void right from the beginning and will be of no legal effect.

1. LHC 2011 PTD 2643; EPCT (Pvt) Ltd – **[WWF is Fee and Not a Tax]**
2. SHC PLD 2013 Sindh 449; Shahbaz Garments (Pvt) Ltd – **[WWF is Tax and Not a Fee]**
3. PHC 2015 PTD 193; Associated Industries (Pvt) Ltd - **[WWF is Fee and Not a Tax]**

“WWF IS FEE & NOT A TAX”

These conflicting decisions were taken up in the Supreme Court of Pakistan (SC), which in its judgment dated November 10, 2016 has held that WWF IS NOT A TAX and hence the amendments made in WWF Ordinance through the Finance Acts 2006 and 2008 are unconstitutional and unlawful and consequently the provisions of the WWF Ordinance, as these stood before the amendments of 2006 and 2008 are restored.

“The discussion above that the subject contributions/payments do not constitute a tax is sufficient to hold that any amendments to the provisions of the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 could not have been lawfully made through a Money Bill, i.e. the Finance Acts of 2006 and 2008, as the amendments did not fall within the purview of the provisions of Article 73(2) of the Constitution”

WWF PAYMENT BETWEEN TY 2006 TO TY 2016

Challenges for the employers paid WWF without backing of law:

- ❑ Who will be responsible for processing the refunds, FBR or WWF department?.
- ❑ FBR was acting as collecting agent.
- ❑ How will taxpayer get refund from WWF department?
- ❑ The FBR might argue that the refunds would retroactively change taxable income calculations, as the WWF contribution was deducted from taxable income under Section 60A of the Income Tax Ordinance, 2001.

Concurrent Legislative List [CLL]:

The Concurrent Legislative List contained subjects on which both the federal government and the provincial governments could legislate. Both tiers of government had jurisdiction over these matters.

In case of a conflict between a federal law and a provincial law on a subject in the Concurrent List, the federal law would prevail.

Federal Legislative List [FLL]:

The Federal Legislative List contained subjects on which only the federal government could legislate. The provincial governments did not have the authority to make laws on these matters.

THE SINDH WORKERS WELFARE FUND ACT, 2014

This is applicable primarily to industrial establishments the total income of which in a tax year, is not less than Rs.500,000. Industrial establishment is defined to mean –

- ❑ Factories and workshops involved in manufacturing, processing, or production using various source of energy;
- ❑ any concern working in mine or quarry or natural gas or oilfield;
- ❑ any concern engaged in the carriage of worker and goods by inland mechanically propelled vessels;

THE SINDH WORKERS WELFARE FUND ACT, 2014

- ❑ any concern engaged in the growing of tea, coffee;
- ❑ any concern engaged in the Banking or financial Institution except State Bank of Pakistan;
- ❑ any concern engaged in telecommunication;
- ❑ any establishment to which the Sindh Shops and Commercial Establishment Act, 2015 (Sindh Act No. XII of 2016), for the time being applies

THE SINDH WORKERS WELFARE FUND ACT, 2014

- any concern which the Government declares to be an industrial establishment for the purposes of the Sindh WWF Act. However, any concern or establishment which is owned by Government or by a corporation established by Government or where majority of its shares are owned by the Government is not liable to pay WWF

THE SINDH WORKERS WELFARE FUND ACT, 2014

Rate of the SWWF is 2% of total income.

Total Income means:

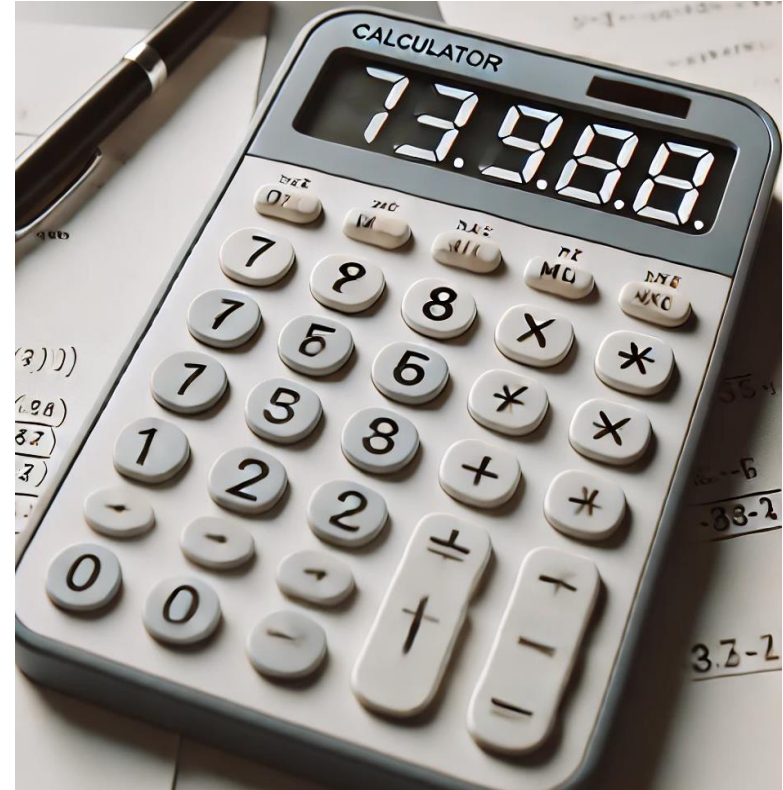
- (i) Where return of income is required to be filed under Income Tax Ordinance, 2001, or under this Act, the profit as per accounts or the declared income as per the return of income whichever is higher.
- (ii) Where return of income is not required to be filed, four percent of the receipt as per the statement filed under section 115 of the Income, Tax Ordinance, 2001.
- (iii) Where both return and statement are filed under sub-clauses (i) and (ii), both the incomes would be clubbed to form the total income;
- (iv) The income tax and other taxes deducted at source or paid with income tax return should be considered as tax paid on taxable income.

THE SINDH WORKERS WELFARE FUND ACT, 2014

Due Date:

- ❑ On or before the due date for income tax return under the Income Tax Ordinance, 2001.
- ❑ Where return is not filed by the taxpayer on due date;

Taxpayer shall pay provisionally on the basis of accounting profit within 30 days of closure of accounts.



THE SINDH WORKERS WELFARE FUND ACT, 2014

Default Surcharge:

Default surcharge @15% per annum of the amount due from it, from the date on which it is was originally payable to the date on which it is paid.

Recovery of Arrears:

Section 66 of the Sindh Sales Tax on Services Act, 2011 will apply for the arrears of SWWF.

THE SINDH WORKERS WELFARE FUND ACT, 2014

Other Provisions of Sindh Sales Tax on Services Act, 2011

Sindh Sales Tax on Services Act, 2011 and rules, notifications, orders and instructions issued thereunder shall, mutatis mutandis, apply for the collection and payment of contribution under this Act in so far as they relate to—

- (a) Registration and de-registration;
- (b) Manner and mode of payment;
- (c) Assessment, audit, adjudication and enforcement including imposition of penalty;
- (d) Appeals and prosecution;
- (e) Exemption of penalty and default surcharge; and
- (f) Other allied and ancillary matters.

SCOPE OF SWWF, 2014 VS. WWF, 1971

SWWF, 2014

Factories and workshops involved in manufacturing, processing, or production using various source of energy;

Any concern working in mine or quarry or natural gas or oilfield;

Any concern engaged in the carriage of worker and goods by inland mechanically propelled vessels;

Any concern engaged in the growing of tea, coffee;

WWF, 1971

Factories and workshops involved in manufacturing, processing, or production using various source of energy;

Any concern working in mine or quarry or natural gas or oilfield;

Any concern engaged in the carriage of men and goods by inland mechanically propelled vessels;

Any concern engaged in the growing of tea, coffee; rubber or cinchona;

SCOPE OF SWWF, 2014 VS. WWF, 1971

SWWF, 2014

Any concern engaged in the Banking or financial Institution except State Bank of Pakistan

Any concern engaged in telecommunication;

Any establishment to which the Sindh Shops and Commercial Establishment Act, 2015 applies

WWF, 1971

Not covered under the definition of Establishment.

Not covered under the definition of Establishment.

Not covered under the definition of Establishment.

TOTAL INCOME SWWF, 2014 vs. WWF, 1971

SWWF, 2014

Higher of the two:

- 1) Profit as per accounts
- 2) Taxable Income

4% of the receipts in case of Income fall under Final Tax Regime [FTR]

Income exempt under Income Tax Ordinance, 2001 – Accounting income

WWF, 1971

Only Taxable Income is subject to the payment of WWF

FTR income is not subject to WWF

Exempt income is not subject to the payment of WWF

60A. Workers' Welfare Fund.—

A person shall be entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971 (XXXVI of 1971)

SWWF IS ALLOWABLE EXPENSE U/S 20 OF THE INCOME TAX ORDINANCE, 2001

In case of Dawlance (Pvt) Ltd. vs Commissioner IR, learned Appellate Tribunal Inland Revenue held that WWF is allowable business expense:

“We have heard arguments of both the rival parties and also carefully examined the relevant provisions of law and are of the view that even if Section 60A does not cover the WWF paid to SRB, the same should be allowed as business expense under Section 20 of the Ordinance as this is not hit by Section 21(a) of the Ordinance.”

SCP JUDGEMENT ON TRANS-PROVINCIAL MATTERS [SSGC & OTHERS VS FEDERATION OF PAKISTAN & OTHERS]

23. For the foregoing reasons, the appeals as also the petition are dismissed and it is held as under: - .

(1) the Federal Legislature has extra-territorial authority but no such extra-territorial authority has been conferred to the Provincial Legislature by the Constitution;(2) the Federal legislature does, but the Provincial Legislature does not, have legislative competence to legislate to regulate the trade unions functioning at trans-provincial level;

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(7) the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one provinces shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations.

60A. Workers' Welfare Fund.—

A person shall be entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971 (XXXVI of 1971) or under any law relating to the Workers' Welfare Fund enacted by Provinces after the eighteenth Constitutional amendment Act, 2010:

Provided that this section shall not apply in respect of any amount of Workers' Welfare **Fund** paid to the Provinces by a trans-provincial establishment.

In Appeal No. AT-14/2024 M/s. Ali Daniyal Industries (Pvt.) Ltd. vs Assistant Commissioner (Unit-37) SRB, the Learned Appellate Tribunal, SRB held that WWF will remain with FBR.

“Since the decision of CCI that “WWF shall remain with FBR” is in field, the assessing officer was not justified in levying WWF amounting to Rs. 1,529,987/-.”

We appreciate your attention.

Thank You.