

**Government of Pakistan
Revenue Division
Federal Board of Revenue
Inland Revenue**

C.No.7(1)TIPU/IR/2020

Islamabad, March 26, 2021

**Circular No. 13 of 2021 – Operations
(Income Tax)**

Subject: Procedure for Issuance of Exemption Certificate for Import of Industrial Inputs/Machinery by FATA/PATA-Resident Tax Persons

In pursuance to the amalgamation of FATA/PATA regions via 25th Amendment to the Constitution, in order to boost economic development therein, the Government of Pakistan, vide Clause (146) of Part I of 2nd Schedule to the Income Tax Ordinance, 2001 (hereinafter “the I.T.O, 2001”), exempted income “of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan...with effect from the 1st day of June, 2018 to the 30th day of June, 2023.” The “provisions of sections in Division III of Part V of Chapter X and Chapter XII” of the I.T.O, 2001, pertaining to withholding taxes have also been rendered inapplicable to FATA/PATA-domiciled tax persons vide Clause (110) of Part IV of 2nd Schedule to the I.T.O, 2001.

2. Although, FBR’s stated position continues to be that section 148 by dint of its being in Division II (instead of Division III) of Part V of Chapter X of the I.T.O, 2001, it has consciously been excluded from the nexus of Clause (110) by the Legislature as also emphatically articulated by FBR vide letter No.DOC.No.1(1)-M(IR-Ops)/2020/165904-R dated 21-09-2020, yet in view of Hon’ble Peshawar High Court’s judgement in W.P.No.442-M of 2020 to the contrary, and till its reversal by the Supreme Court of Pakistan in a CPLA filed by FBR, FATA/PATA-domiciled tax persons could avail exemption u/s 148 of the I.T.O, 2001.

3. There, however, does exist significant confusion as to the mechanism of operationalization of the exemptions enshrined in the law. In particular, a controversy has recently raged vis-à-vis application of withholding tax at the import stage as to whether it would be available to a FATA/PATA-domiciled persons *per se* or it would trigger on issuance (and production) of exemption certificate as stipulated in section 148/159 of the I.T.O, 2001.

4. The Hon'ble Peshawar High Court in W.P.No.442-M of 2020 titled as *Hadi Khan Silk Mills Vs. Federation of Pakistan* has also categorically held that FATA/PATA-domiciled tax persons "shall be exempt from levy and imposition of advance tax payable under section 148...at import stage, till the period mentioned in Clause 146" of Part 1 of 2nd Schedule to the I.T.O, 2001. More importantly, the Hon'ble High Court, in the same judgement, has gone on to address the **critical question** as to how this particular exemption would operationalize by mandating **"that for seeking exemption from payment of advance income tax under section 148 of the Ordinance at import stage, the petitioners shall have to seek exemption from the levy thereof, under section 159 of the Ordinance."** The Hon'ble High Court has re-affirmed this mechanism in W.P.No.1219-M of 2020 titled *Sohrab Sons & Co. Vs. Government of Pakistan & Others* and W.P.No.2009-P of 2020 titled *M/s Dawood Steel Vs. Federation of Pakistan & Others*.

5. Foregoing in view, a standardized procedure for the issuance of Exemption Certificate on quarterly basis is being rolled out so as to ensure fair operationalization of the exemptions enshrined in the law. Accordingly, a FATA/PATA-domiciled person appearing on the **"active taxpayers' list"** instituted by FBR in terms of section 181A of the I.T.O, 2001, and intending to import "plant, machinery, equipment" or "industrial inputs" for installation or consumption at his own manufacturing site **would lodge a written application to the Commissioner Inland Revenue (CIR)** concerned providing therein: -

- (i) Production capacity of the manufacturing unit, and if the same has increased over time, the month from which the enhanced production capacity was installed along with particulars of the additional manufacturing capacity;
- (ii) Month-wise quantity of (a) raw material imported, and (b) purchased locally since July, 2020 (or 1st month of the tax year);
- (iii) Quantity of stock available from earlier imports;
- (iv) Month-wise details of Gas and Electricity consumed since July, 2020 (or 1st month of the tax year);
- (v) Month-wise particulars of goods produced;
- (vi) Month-wise details of post-dated cheques (PDCs) deposited earlier with Customs authorities, if any;
- (vii) List of buyers of the goods produced;
- (viii) Bank statement for the past quarter;
- (ix) Electricity/Gas bills for the past quarter; &
- (x) Month-wise proof of Federal Excise paid – **only** in case of goods covered under the Federal Excise Act, 2005.

6. The CIR would ensure that particulars supplied by the taxpayer are verified before the issuance of Exemption Certificate. In case any data are not verified, the taxpayer would be given an opportunity to complete the application, provide the required information, and make up the deficiency. The Exemption Certificate issued will be directly mailed to the Collector Customs concerned with a copy thereof being duly marked to Member (IR Operations) and Member (Customs Operations), and under no circumstances will be handed over to the taxpayer. If the CIR decides to reject the application for a Exemption Certificate, the previous PDCs deposited would be encashed.

Romana
26.3.2021

Romana Alam
Second Secretary (TIPU)

Distribution: -

- (i) SA to Chairman, FBR
- (ii) SA to Member (IR Operations)
- (iii) SA to Member (Customs Operations)
- (iv) Chief Commissioners IR LTOs, MTO, CTOs, & RTOs
- (v) Chief Collectors Customs
- (vi) President, Pakistan Tax Bar Association

