

Ref : KTBA/10.2023/097

Date : October 11, 2023

Malik Amjad Zubair Tiwana

Chairman,

Federal Board of Revenue,

Islamabad

Dear Tiwana sahib, AOA

CREDIT NOTE CANNOT BE ISSUED WITHOUT COMMISSIONER'S CERTIFICATE

We write to you with utmost urgency regarding the persistent and unresolved issue of restrictions on the FBR portal on the incorporation of credit notes. Our previous communication on this matter, dated Saturday, September 30, 2023, remains unaddressed still to date.

Current situation on hand

2- Since May 2023, the IRIS was stopped to incorporate credit notes in Annexure -C of the monthly sales tax returns following which we promptly communicated the resulting challenges, to your office, faced by your taxpayers in our above referred earlier letter but to end in vain.

The New Circular: Implications

3.1- While the redressal of our issues raised in the earlier letter was still awaited, the issuance of yet another Circular No.5(17)STL&P/2021/136051-R dated 05 September 2023 came as no less than a surprise. The new circular has outlined an altogether new procedure to raise credit notes for sales returns from unregistered buyers and has imposed an additional condition, rather, for verification of the same by the Commissioner concerned. This additional step or condition for all the obvious reason must have been put in place to ensure stoppage of revenue leakages for FBR but has been done, yet for once again, at the cost of ever increasing and burdening compliances on the Taxpayer/Filer, without any real direct effort on part of the department itself to mend the hole.

3.2- The impractical and protractive process for a registered taxpayer to indulge into any departmental process of getting approval for credit notes is very unthoughtful. The whole situation presents itself as a bad example as to how a regulator should not pass a regulation without taking any minimum cognizance of the time and cost of its own taxpayer to be consumed in fulfilling that given condition.

The New Circular: Legal Infirmary

3.3- Needless to mention that this circular and its unrealistic condition goes straight against the respective law where it contradicts rule 22 of chapter 3 "credit and debit notes and destruction of goods" of the sales tax rules, 2006, which allows for these adjustments without any such verification from a commissioner. Hence, therefore, without the sanction from the main law from where emanates the scheme of credit notes, the subject circular with its new condition suffers inherently from the legal infirmity, which makes void ab initio.

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THE NEW CIRCULAR: MORE IMPLICATIONS:

Without prejudice to the illegality highlighted supra, we would like to highlight few instances whereby certain unforeseen implications have been explained to convince your office as to how the condition of approval hasn't captured all the situations, even if it had been issued with the legal backing in consonance with the main law.

Insignificant amount of Sales Return and Sales Tax

4.1- The requirement of this new condition becomes more impractical particularly in cases where the amount of credit note is insignificant as compared to the time and effort that would necessarily be required for compliance. It is, therefore, advisable that a monetary threshold should be prescribed under which one should be absolved from going to the Commissioner for approval.

Other reasons for Sales Return

4.2- The Section 9 of the Sales Tax Act, 1990 (Act) encompasses various scenarios where issuance of credit notes may be required, including:

- i. Cancellations of supply,
- ii. Return of goods due to Changes in the nature or,
- iii. Return of goods due to Changes in the value of supply,
- iv. Return of goods due to other events leading to alterations in supplies or tax amounts.

It is lacuna of the drafting which implicates above instances under its fold, which is patently not the intention of the circular, otherwise. It is, therefore, advisable that exceptions should be carved out for these extraordinary business situations, which do not carry potential leakage.

Why should Sales Return from a Service Provider suffer?

4.3- A serious implication which must have not been in sight at the time of issuance of the above Circular that sale returns from a service provider, who is not liable for registration for Sales Tax and hence cannot be called as "unregistered", would also be implicated. A necessary clarification is, therefore, required that the circular is to apply only to sales return from unregistered entities under the Sales Tax Act, 1990 and not otherwise.

Timelines

4.4- The circular fails to establish clear timelines or document requirements both for taxpayers and field formation (Commissioner) offices for verification purposes, thereby leaving room for arbitrary decision-making.

Time taken by Commissioner for approval, not to be counted

4.5- Another implication, which has not been considered and has remained completely out of sight that since no timelines have been prescribed as mentioned above, therefore, whatever time period is taken by the commissioner to approve the issuance of credit notes, should not be counted in calculation of six (06) months period for issuance of credit notes.

WAY FORWARD

Need for safeguarding of federal tax revenue against fraudulent activities cannot be denied, any amendment or restrictions, however, should not be inflicting to already compliant sales taxpayer of the country and that too in their daily and ordinary course of business. Needless to mention that provisions under Sections 11 and 25 of the Act already provide a sufficient window to the department for any verification; with this new condition even when it is legally placed is poised to cause merely an additional verification. The way forward, therefore, seems more pragmatic if it understood that:

a- B2b transactions and mitigating fraud

cash transaction, undeniably, is the root of all these ills. Transactions with NTN or CNIC and Bank payments are inherently less susceptible to fraudulent activities, which are more commonly associated with cash sales. Therefore, Credit notes issued for transactions carried out between businesses/persons, even if they are unregistered for sales tax, undertaken through Banks payments should be taken out of the ambit of this circular. This will save all the unintended implications cropping out of this circular and at the same time will meet the FBR objective of plugging the leakage hole.

b- Urgent Reversal required.

In light of the above, it is proposed that the new circular should immediately be reversed and reintroduced with the aforesaid changes once it has been sanctioned the "legality" without which it will remain illegal.

We at KTBA would be more than willing to provide any assistance with our unwavering commitment to foster tax compliance and plugging leakages in the tax collection system. We would be pleased to hear from your office in context of the above.

Regards,

(Syed Zafar Ahmed)

President

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C.C. to:

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- ii. **Mir Badshah Khan Wazir**, Member-IR (Operations), FBR, Islamabad.
- iii. **Mr. Nasir Khan**, Member (Information Technology), FBR, Islamabad.
- iv. **Dr. Muhammad Amir Malik**, Chief Executive Officer / Chairman BOM, PRAL, Islamabad.
- v. **Mr. Rana Munir Hussain**, President, Pakistan Tax Bar Association.
- vi. **Press Media**