

E-News & Views

NV # 01/2019

2019/2020

A Publication of KTBA

April 2019 to December 2019

A publication covering information on recent important judicial pronouncements, circulars and clarifications

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FROM THE DESK OF THE PRESIDENT

Dear Members,

It gives me immense pleasure to pen down my message for the 1st edition of E-News & Views of Karachi Tax Bar Association (KTBA) Executive Committee for the Term 2020. In this age of technology access to updated professional resource is a key to success as none of us can afford to stay outdated/offline.

Undoubtedly, the KTBA has a history of archiving and sharing professional resources with its members in direct/indirect taxation and corporate regimes. The E-News & Views (publication) serves as a catalyst and it gives a bird eye view to our Members for updating themselves with the latest notifications and judgments. I have gone through the contents of this publication covering the period from April 2019 to December 2019 and have found it to be very informative and educational.

I personally feel that E-News & Views publication is always the first preference for me to look for any notification and/or judgment on a particular issue and I am privileged to inform that KTBA is the pioneer in disseminating and sharing this knowledge. Since the Year 2002, KTBA is publishing E-News and Views for the facilitation of its Members.

I have no hesitation to acknowledge here that every member of KTBA's E-News & Views Sub-Committee has shown an exemplary level of responsibility and commitment in bringing out this edition of E-News & Views during these trying times. I am blessed to have a wonderful team of E-News & Views Sub-Committee led by Mr. Haris Tufail. Everyone who cares about knowledge owes the contributors a debt of thanks as well.

As we are gripped by the 2nd wave of Covid-19 Pandemic, I would request you all to take care of yourselves and stay safe! I pray to Almighty Allah to keep all of us rather the entire humanity safe from this pandemic!

In the end, I would once again like to thank the entire team and hope that your team would also make this publication on regular intervals. I wish all success to the team!

Yours in service,

Muhammad Zeeshan Merchant

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

It is with utmost pleasure to announce the release of the first publication of E-News & Views of this Committee.

It would not be out of place to put on record that amidst the ongoing pandemic it has been a challenge to be able to meet the stakeholder expectations. This is surely due to laudable team efforts and the whole team deserves a round of applause.

We have compiled in this issue Circulars, SROs and General Orders concerning revenue laws of the Country issued from April 2019 till December 2019. In addition, important case law dealing with Sales-tax, Federal Excise and Direct Tax are also part of this publication.

We have made our humble efforts to make certain contribution to the E-News & Views resource centre. The KTBA remains committed to act as an invaluable resource centre for its members.

We welcome your suggestions and comments which would indeed help us in our pursuit of improving the readership as well as quality of this publication.

Before leaving, I would like to thank E-News & Views Committee members for their valuable input, continued efforts and support and I would like to close this message with a prayer that may the new year dawn with much pleasure and peace and offer us a pandemic free dwelling.

Yours in service,

Haris Tufail

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
04 of 2019	Jun 03, 2019	Extension in Due date of Filing of Returns for the Tax Year 2018 upto 30th June 2019
06 of 2019	July 01, 2019	Extension in Due date of Filing of Returns for the Tax Year 2018 upto 2nd August 2019
07 of 2019	July 02, 2019	Extension in Due date of Filing of Returns for the Tax Year 2018 upto 2nd August 2019
08 of 2019	July 05, 2019	FBR has clarified that until the official notification of new FBR's Valuation rates, the existing rate notified on 01.02.2019 shall be applicable.
09 of 2019	July 30, 2019	Through this Circular, explanations regarding Changes in the Income Tax Ordinance, 2001 and Income Tax Rules, 2002 made through Finance Act, 2019 were provided.
10 of 2019	July 31, 2019	Extension in Date for Filing of Bi-Annual Withholding Statement under section 165 of the ITO, 2001 upto 20th August 2019
11 of 2019	August 01, 2019	A Corrigendum was issued regarding the resident status of a taxpayer in circular No. 9 of 2019
12 of 2019	August 02., 2019	Extension in Due date of Filing of Returns for the Tax Year 2018 upto 09th August 2019
13 of 2019	August 20., 2019	Through This Circular an explanation of Section 109A of ITO, 2001 was inserted to include income of Foreign Controlled entity and taxing in the year it was earned instead of receiving.
14 of 2019	September 30, 2019	Extension in Due date of Filing of Returns for the Tax Year 2019 upto 31st October 2019
15 of 2019	September 31, 2019	Extension in Due date of Filing of Returns for the Tax Year 2019 upto 30th November 2019
16 of 2019	November 29, 2019	Extension in Due date of Filing of Returns for the Tax Year 2019 upto 16th December 2019
17 of 2019	December 16, 2019	Extension in Due date of Filing of Returns for the Tax Year 2019 upto 31st December 2019
18 of 2019	December 31, 2019	Extension in Due date of Filing of Returns for the Tax Year 2019 upto 31st January 2020

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
469(I)/2019	April 17, 2019	Amendment in Chapter VIII of the Income Tax Rules, 2002
578(I)/2019	May 25, 2019	Assets Declaration (Procedure and Conditions) Rules, 2019
657(I)/2019	June 27, 2019	Panel for Alternate Dispute Resolution Committees for eight (08) cities
744(I)/2019	July 09, 2019	Delegation of Powers to Director General International Tax Operations
813(I)/2019	July 17, 2019	Draft amendment in rule 44 of Income Tax Rules, 2002
847(I)/2019	July 23, 2019	Supersession of SRO 130(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Sukkur
845(I)/2019	July 23, 2019	Supersession of SRO 128(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Sargodha
844(I)/2019	July 23, 2019	Supersession of SRO 127(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Sahiwal
843(I)/2019	July 23, 2019	Supersession of SRO 126(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Rawalpindi
842(I)/2019	July 23, 2019	Supersession of SRO 125(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table- Quetta
841(I)/2019	July 23, 2019	Supersession of SRO 124(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Peshawar
840(I)/2019	July 23, 2019	Supersession of SRO 123(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Multan
839(I)/2019	July 23, 2019	Supersession of SRO 122(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Mardan
838(I)/2019	July 23, 2019	Supersession of SRO 121(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Lahore
837(I)/2019	July 23, 2019	Supersession of SRO 120(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Karachi
836(I)/2019	July 23, 2019	Supersession of SRO 119(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Jehlum

SRO REFERENCE	DATE	SUBJECT
835(I)/2019	July 23, 2019	Supersession of SRO 118(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table - Jhang
834(I)/2019	July 23, 2019	Supersession of SRO 117(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Islamabad
833(I)/2019	July 23, 2019	Supersession of SRO 116(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Hyderabad
848(I)/2019	July 23, 2019	Supersession of SRO 665(I)/2016 dated 02.08.2016 - Immoveable property valuation rates table – Gwadar
832(I)/2019	July 23, 2019	Supersession of SRO 115(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Gujrat
846(I)/2019	July 23, 2019	Supersession of SRO 114(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Gujranwala
831(I)/2019	July 23, 2019	Supersession of SRO 113(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Faisalabad
830(I)/2019	July 23, 2019	Supersession of SRO 112(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Bhawalpur
829(I)/2019	July 23, 2019	Supersession of SRO 111(I)/2019 dated 01.02.2019 - Immoveable property valuation rates table – Abbottabad
849(I)/2019	July 24 , 2019	Amendment in rule 44 of Income Tax Rules, 2002
903(I)/2019	August 09, 2019	Panel of Alternative Dispute Resolution (IR)
940(I)/2019	August 20, 2019	Functions and Powers of the office of the Director General Special Initiatives, FBR
951(I)/2019	August 23, 2019	Draft Amendments - Income Tax Return Forms
968(I)/2019	August 29, 2019	Income Tax Return - Companies - Draft Amendments
979(I)/2019	September 02, 2019	Final Income Tax Return 2019 for Individuals, Salaried Individuals, AOPs
1000(I)/2019	September 06, 2019	Final Income Tax Return Forms for Companies
1160(I)/2019	September 27, 2019	Manual - Final Income Tax Return Form for Individual

SRO REFERENCE	DATE	SUBJECT
1320(I)/2019	November 08, 2019	Special instructions regarding books of accounts, documents and records to be maintained by designated persons (DPs) and reporting of suspicious transactions
1376(I)/2019	November 13, 2019	Amendment in SRO 843(I)/2019 dated 23.07.2019

Indirect Tax CIRCULARS, GENERAL ORDERS AND SROs

Indirect Tax Circulars

CIRCULAR REFERENCE	DATE	DESCRIPTION
C.No. 9(11)ST-LPE/Misc/2016/75269-R	June 03, 2019	Extension in the date for submission of Sales Tax and Federal Excise return for the Tax Period of May, 2019
C.No.1(83)/STM/2019/82473-R	June 22, 2019	Approval for conducting stock taking in the cases of five zero-rated sections falling under jurisdiction
C. No. 1/2-STB/2019	July 15, 2019	Clarification regarding Sales Tax Exemption on Wheat Flour
C. No. 1/2-STB/2019	July 22, 2019	Clarification Regarding provision of NIC information on Sales Tax Invoice issued by Sales Tax Registered person
C. No. 1/2-STB/2019	July 26, 2019	Finance Act, 2019 - Explanation of important amendments in Sales Tax Act, 1990, Federal Excise Act, 2005 and Islamabad Capital Territory (Tax on Services) Ordinance, 2001
Circular No. 2/2019	August 01, 2019	Sales Tax Clarification regarding STRN Nos mentioned on sales tax invoices
C.No.9(11)ST-LPE/Misc/2016/105566-R	August 09, 2019	Extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of July 2019
C.No.9(11)ST-LPE/Misc/2016/106287-R	August 16, 2019	Extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of July 2019
C.No.9(11)ST-LPE/Misc/2016	August 22, 2019	Extension in the date for the payment of Sales Tax and FED for the Tax Period of July 2019
C.No.9(11)ST-LPE/Misc/2016.	August 22, 2019	Extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of July 2019
C.No.9(11)ST-LPE/Misc/2016	September 16, 2019	Extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of August 2019
C.No.9(11)ST-LPE/Misc/2016	September 20, 2019	Extension in the date for submission of Sales Tax and Federal Excise Return for the Tax Period of August 2019
C.No.9(11)ST-LPE/Misc/2016-261110-R	October 18, 2019	Extension in Date of Payment/ Submission of Sales Tax and Federal Excise Return for the Tax Period of September, 2019

Circular No. 4/2019	October 21, 2019	Circular regarding filing of Annexure H of the sales tax return
C.No.11)CH/FBR/2019	October 28, 2019	Prohibition of personal interaction with taxpayers/businessmen
C.No.9(11)ST-LPE/Misc/2016	October 31, 2019	Extension in date of payment/submission of Sales Tax and Federal Excise Return for the Tax Period of November, 2019
C.No.9(11)ST-LPE/Misc/2016-274602-R	November 20, 2019	Extension in date of submission of Sales Tax and Federal Excise Return for the tax period of October, 2019
C.No.9(11)ST-LPE/Misc/2016/276812-R	November 25, 2019	Extension in date of submission of Sales Tax and Federal Excise Return for the tax period of October, 2019 till 29-11-2019
C.No.2(1)ST-FE/Misc/2019/280683-R	December 04, 2019	Extension in date of Online Integration of Tier-1 Retailers
C.No.3(13)ST&FE/Cond/2014/284513-R	December 12, 2019	Extension in date for filing of Annex-H for the Tax period of July 2019
4078/Z-I/RTO/ATD/2019	December 27, 2019	Jurisdiction of Commissioner Inland Revenue, Zone-I, RTO Abbottabad
4077/Z-II/RTO/ATD/2019	December 27, 2019	Jurisdiction of Commissioner Inland Revenue, Zone-II, RTO Abbottabad
No.1(2)-SS(BDT)18-CPR/280845-R	December 30, 2019	E-Procedure for correction in Computerized Payment Receipt - Income tax, Sales Tax & Federal Excise Duty

Indirect Tax General Orders

General Order No.	Date	Description
100/2019	June 29, 2019	To rescind all STGOs which were issued to allow zero rating under Section 4 of ST Act
101/2019	July 08, 2019	To rescind previous STGO, as being non-operational or transposed to ST Act or Sales Tax Rules, 2006,
102/2019	July 15, 2019	Printing of Retail Price on Imported Third Schedule Items
103/2019	August 07, 2019	Printing of retail price on imported third schedule items and other related issues
104/2019	August 29, 2019	Payment of Sales Tax on the basis of Retail Price on Raw Tea Imported by Tea Manufacturers
105/2019	September 13, 2019	Adjustment/Refund of Sales Tax paid under erstwhile Sales Tax Special Procedures Rules, 2007
106/2019	October 04, 2019	Definition/Rules for CNIC/Good faith for sales tax for the purpose of Section 23 of the Act, 1990
107/2019	November 21, 2019	Enforcement of Sales Tax payable by Wholesalers/Distributors of products originating from AJ&K

Indirect Tax General Orders for allowing/withdrawal zero rating facility

General Order No	Date	Description
43/2019	April 01, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
42/2019	April 01, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
48/2019	April 05, 2019	Amendment in STGO no. 17/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
47/2019	April 05, 2019	Amendment in STGO no. 9/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
46/2019	April 05, 2019	Amendment in STGO no. 8/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
45/2019	April 05, 2019	Allowing of zero rating facility on supply of furnace oil, diesel oil and coal
44/2019	April 05, 2019	Amendment in STGO no. 11/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
49/2019	April 09, 2019	Allowing facility of zero-rating on supply of Furnace Oil and Diesel Oil
51/2019	April 10, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity
50/2019	April 10, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
53/2019	April 19, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
52/2019	April 19, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
58/2019	April 23, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - withdrawal facility of zero-rating on supply of gas.
57/2019	April 23, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - withdrawal facility of zero-rating on supply of electricity
56/2019	April 23, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of gas
55/2019	April 23, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
54/2019	April 23, 2019	Amendment in STGO 12/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
65/2019	April 24, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity

64/2019	April 24, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of gas.
63/2019	April 24, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity.
62/2019	April 24, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity.
61/2019	April 24, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity
60/2019	April 24, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
59/2019	April 24, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - allowing facility of zero rating on supply of electricity
66/2019	April 25, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity
68/2019	April 25, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of gas
67/2019	April 25, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity
71/2019	May 02, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
70/2019	May 02, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
69/2019	May 02, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity
72/2019	May 03, 2019	Allowing facility of zero-rating on supply of Furnace Oil, Diesel Oil and Coal
75/2019	May 06, 2019	Allowing facility of zero-rating on supply of Diesel Oil and Coal
74/2019	May 06, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity.
73/2019	May 06, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Allowing facility of zero rating on supply of gas
76/2019	May 06, 2019	Allowing facility of zero-rating on supply of Furnace Oil and Diesel Oil
79/2019	May 08, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
78/2019	May 08, 2019	Amendment in STGO 14/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
77/2019	May 08, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity

86/2019	May 13, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of gas
85/2019	May 13, 2019	Amendment in STGO 09/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity
84/2019	May 13, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
83/2019	May 13, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
82/2019	May 13, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
80/2019	May 13, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
88/2019	May 15, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas
87/2019	May 15, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - allowing facility of zero-rating on supply of electricity
97/2019	May 22, 2019	Amendment in STGO 38/2010 dated 01-10-2010 - Allowing facility of zero-rating on supply of electricity
96/2019	May 22, 2019	Amendment in STGO 12/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity
95/2019	May 22, 2019	For allowing zero rating facility
94/2019	May 22, 2019	Amendment in STGO 38/2010 dated 01-10-2010 - Allowing facility of zero-rating on supply of electricity.
93/2019	May 22, 2019	Amendment in STGO 11/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
92/2019	May 22, 2019	Amendment in STGO 17/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of gas.
91/2019	May 22, 2019	Amendment in STGO 08/2007 dated 13-09-2007 - Allowing facility of zero-rating on supply of electricity
90/2019	May 22, 2019	Amendment in STGO 17/2007 dated 13-09-2007-Allowing facility of zero-rating on supply of gas
89/2019	May 22, 2019	Amendment in STGO 09/2007 dated 13-09-2007- Allowing facility of zero-rating on supply of electricity
99/2019	May 23, 2019	Amendment in STGO 16/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of gas.
98/2019	May 23, 2019	Amendment in STGO 07/2007 dated 13-09-2007 - Withdrawal facility of zero-rating on supply of electricity.

Indirect SROs

SRO REFERENCE	Dated	SUBJECT
488(I)/2019	April 25, 2019	Amendment in Sales Tax Rules, 2006.
499(I)/2019	April 30, 2019	Changes in sales tax rates for petroleum products with effect from 1 st May to 5 th May 2019.
507(I)/2019	May 04, 2019	Changes in sales tax rates for petroleum products with effect from 5 th May 2019.
603(I)/2019	May 31, 2019	Changes in sales tax rates for petroleum products with effect from 1 st June, 2019.
657(I)/2019	June 20, 2019	Panel of certain persons to be Members of Committees for Alternate Dispute Resolution.
690(I)/2019	June 29, 2019	Fixation of value of supply to the CNG consumers for the purpose of charging of sales tax from CNG stations by the gas transmission and distribution companies.
691(I)/2019	June 29, 2019	To make amendments in Notification No. SRO 190(I)/2002, dated the 2nd April, 2002.
692(I)/2019	June 29, 2019	To make amendments with effect from the 1st July, 2019 in Notification No. SRO 648(I)/2013, dated the 9 th July, 2013.
693(I)/2019	June 29, 2019	To make amendments with effect from the 1st July, 2019 in SRO Notification No. SRO 509(I)/2013, dated the 12 th June, 2013.
694(I)/2019	June 29, 2019	To rescind Notifications No. SRO 68(I)/2006, dated 28th January, 2006, SRO 480(I)/2007, dated 9th June, 2007, SRO 660(I)/2007, dated 30th June, 2007, SRO.769 (I)/2009, dated 4th September, 2009, SRO 1125(I)/2011, dated 31st December, 2011 and SRO 398(I)/2015 dated 8 th May, 2015.
697(I)/2019	June 29, 2019	Fixation of value of locally produced goods.
698(I)/2019	June 29, 2019	Amendment in Sales Tax Rules, 2006
700(I)/2019	June 30, 2019	To make amendment from the 1st July, 2019, in Notification No. SRO 57(I)/2016, dated the 29 th January, 2016 – Petroleum products
723(I)/2019	July 06, 2019	Amendment in Notification No. SRO 690(I)/2019, dated 29 th June, 2019.
903(I)/2019	July 31, 2019	Panel of certain persons to be Members of Committees for Alternate Dispute Resolution.
918 (I)/2019	August 07, 2019	Amendment in Sales Tax Rules, 2006.
993 (I)/2019	September 04, 2019	To rescind Notifications No. SRO 697(I)/2019, dated 29 th June, 2019
992(I)/2019	September 04, 2019	Fixation of minimum values of locally certain produced goods (steel/iron) for the purpose of payment of federal excise duty in sales tax mode on ad valorem basis.

1087(I)/2019	September 19 , 2019	In case of ginned cotton, the liability to pay sales tax shall be of the person receiving the supply and shall be discharged in certain manner.
1190(I)/2019	October 02, 2019	Certain persons to be excluded from the purview of section 8B(1) & (4) and certain retailers input tax to the extent of ninety-five percent; and first proviso of section 8B(1), (2) & (3) shall apply, mutatis mutandis, to the input tax to be adjusted or carried forward.
1203(I)/2019	October 10, 2019	Amendment in Sales Tax Rules, 2006.
1290(I)/2019	October 30, 2019	To make amendments in its Notification No. SRO 1190(I)/2019, dated the 2 nd October, 2019.
1321(I)/2019	November 08, 2019	To make amendments to the Twelfth Schedule to the Sales Tax Act, 1990.

CIRCULARS ISSUED BY SECP DURING THE YEAR 2019

S.No.	Circular No.	Date	Description
1	01 of 2019	January 15, 2019	Licensing of insurance surveyors under Section 112 of the Insurance Ordinance 2000 – Undertaking required under AML notification directive SRO 1525(I)/2018
2	02 of 2019	February 01, 2019	Placement of SECP's Service Disk Management System (SDMS) logo on website of public companies
3	03 of 2019	February 25, 2019	Relaxation from requirement set out in Regulation 7 of the Listed Companies (Code of Corporate Governance) Regulations 2017 – This circular, after the issuance of the Listed Companies (Code of Corporate Governance) Regulations, 2019, has now become inoperative.
4	04 of 2019	March 11, 2019	Approved list of auditors pursuant to Section 48(1) of the Insurance Ordinance 2000
5	05 of 2019	April 19, 2019	Circular No. 08 of 2017 dated 7 April 2017 applicable on Insurance and Takaful operators has been withdrawn – which inter alia required to provide information in respect of to the Commission on monthly basis with respect to single premium life insurance policies having annual premium of Rs. 5 million or above
6	06 of 2019	April 17, 2019	Circular No.10 of 2017 dated 21 April 2017 has been withdrawn – which inter alia required of all Brokers to access compliance status with the regulatory requirements pertaining to KYC, COD and EDD, wherein net traded amount (i.e. value bought - value sold) of an investor
7	07 of 2019	April 24, 2019	Timings of Company Registration Offices, Securities and Exchange Commission of Pakistan

8	08 of 2019	May 28, 2019	Requirements for constant proportion portfolio insurance (CPPI) based collective investment scheme(ies)
9	09 of 2019	-	Not available on the website of SECP or any other website.
10	10 of 2019	July 03, 2019	Instructions in relation to annual financial statements and notices of annual general meeting applicable on listed companies.
11	11 of 2019	-	Not available on the website of SECP or any other website.
12	12 of 2019	-	Not available on the website of SECP or any other website.

Note: (i) Circular No. 09 of 2019, 11 of 2019 and 12 of 2019 are not available on the SECP's website.
(ii) Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
2019 PTD 741 [Sindh High Court] Decided on November 28, 2018	236W of the Income Tax Ordinance, 2001	<p>This case relates to section 236W which was inserted in the Income Tax Ordinance, 2001 (2001 Ordinance) through the Income Tax (Fourth Amendment) Ordinance, 2016 in December 2016 requiring any person purchasing immovable property to pay tax @ 3% of the differential amount of immovable property as per the value notified by the Federal Board of Revenue (FBR) and recorded value, the payment whereof would immune the person from application of section 111 of the 2001 Ordinance [related to concealed income, assets, expenditure, etc.]</p> <p>The impugned order was passed by the Inspector of Registration Office, Karachi requiring the payment from the Petitioner under section 236W. The taxpayer contended that sub-lease deed was executed against the property in the Office of the Sub-Registrar after completion of all formalities including payment of CVT, Registration fee, etc. on November 17, 2016, and hence section 236W couldn't be invoked retrospectively.</p> <p>The Hon'ble Court referring to the provisions of Parts X and XI of the Registration Act 1908; held that the actual date of registration under the law was the date when the procedure of registration was executed by the Sub-Registrar i.e. November 17, 2016. Therefore, section 236W was not applicable retrospectively to the petitioner's case.</p>
2019 PTD 903 [Sindh High Court] Decided on October 11, 2018	214C(1A) of the Income Tax Ordinance, 2001	<p>This section authorizes the FBR to select any person for the purpose of audit under section 177 on random or parametric basis as it may deem fit. The section specifically mentions that the FBR is not bound to disclose criteria in case of parametric selection.</p> <p>The plaintiff approached the Hon'ble Court contending that the FBR has selected its case for audit for the tax year 2016 without any advance</p>

		<p>intimation or notification through computerized balloting and that parameters of selection were also not disclosed.</p> <p>The Hon'ble Court refused the claim of the plaintiff holding that the selection having been made through computer ballot on random basis under the Audit Policy, 2017 for which no parameters were used. It however, held that audit has to be culminated as per the timeframe provided for in the Audit Policy and if it is not possible to complete the audit in the given timeframe, extension must be sought from the FBR with reasons as to why extension in timeframe was necessary.</p>
<p>2019 PTD 928</p> <p>[Supreme Court of Pakistan]</p> <p>Decided on January 09, 2019</p>	<p>2(24) & 20 of the Income Tax Ordinance, 1979</p>	<p>The term "income" used in section 2(24) of the 1979 Ordinance and the section 2(29) of the 2001 Ordinance are of widest connotation and hence usually entail protracted litigations.</p> <p>In this case, the tax department levied tax on employer's contributions collected by NWFP Employees' Social Security Institution [ESSI] claiming that under section 20, such contributions constitute income of the employees and not exempt from tax. ESSI's stance was that such amounts were exempt under Clause (62), Part I of the Second Schedule to the 1979 Ordinance. They also claim to get benefit under Clause (142), Part I of the Second Schedule to the 2001 Ordinance.</p> <p>The Hon'ble Supreme Court concluded that the amounts received by ESSIs as contributions were "income" as per the provisions of section 2(24) for, the word "income" is inclusive and not exhaustive, hence taxable in the hands of the employees in the respective assessment years.</p> <p>The Hon'ble Supreme Court refused the claim of exemption under Clause (62), Part I of the Second Schedule to the 1979 Ordinance for the reason that under Clause (62) exemption was available to contribution made voluntarily whereas contributions received by ESSI were statutory and mandatory. Furthermore, the Hon'ble Court also declined to give retrospective application of Clause (142) ibid.</p>
<p>2019 PTD 987</p> <p>[Sindh High Court]</p> <p>Decided on June 20, 2018</p>	<p>233 of the Income Tax Ordinance, 2001</p>	<p>As per this section, where the agent retains commission from any amount remitted by him to the principal, he shall be deemed to have been paid the commission by the principal from which he shall collect advance tax from the agent.</p> <p>In this case, certain media groups filed Suits before the Hon'ble Court against show-cause notices issued to them demanding them to collect advance tax under section 233(2) over the amount of commission calculated in transactions with advertising agents.</p> <p>The tax department held that collection of tax under section 233 is not declared in the withholding statements filed under section 165 and non-deduction leads to disallowance of expense under section 21(c) of the 2001 Ordinance. The plaintiffs pleaded that they have showed the commission as a netting amount received from the advertising agents and not as an expense in their financial statements.</p> <p>The Hon'ble Court restrained the department from passing any orders on the grounds that no occasion arises for the plaintiffs to deduct advance tax as contended by the tax department under section 233 of the 2001 Ordinance.</p>

<p>2019 PTD 1100</p> <p>[Appellate Tribunal Inland Revenue]</p> <p>Decided on January 22, 2018</p>	<p>150 of the Income Tax Ordinance, 2001</p>	<p>In this case, the appellant – NIT Income Fund distributed around 35% of its profit as cash dividend among its unit holders and reinvested the remaining amount of profit for purchase of new units (shares) on behalf of the unit holders with their prior approval. In the return of income for the relevant tax year, the Fund claimed exemption under Clause (99), Part I of the First Schedule to the 2001 Ordinance.</p> <p>The Additional Commissioner amended the assessment under section 122(5A) and held that the Fund has failed to withhold tax under section 150 at the time of purchase of units from the amount of dividend, which he considered as bonus issue. For this reason, the Additional Commissioner disallowed the exemption claimed under Clause (99) on the grounds of non-deduction of tax from bonus shares as bonus shares are excluded for the purpose of computing the threshold of 90% of distribution to qualify for exemption. The Commissioner (Appeals) upheld such treatment of the Additional Commissioner.</p> <p>The Appellate Tribunal stated that as per Regulation 63 of the Non-Banking Finance Companies and Entities Regulations, 2008, the management company of the Fund is allowed to reinvest dividend amount of unit holders upon their request. Hence, this amount shall also be considered as dividend distribution along with actual cash payments made.</p> <p>The Appellate Tribunal rejected the stance of the Additional Commissioner of disallowing exemption by holding that he has misinterpreted the law by declaring the dividend payment to unit holders by way of reinvestment as additional bonus issue.</p>
<p>2019 PTD 1162</p> <p>[Appellate Tribunal Inland Revenue]</p> <p>Decided on May 28, 2018</p>	<p>131 of the Income Tax Ordinance, 2001</p>	<p>In this case, an application was filed by the taxpayer to the Appellate Tribunal requesting to recall the order passed on the departmental appeal, as the order was passed after three months and five days of hearing of the appeal.</p> <p>The Appellate Tribunal relied on the Hon'ble Supreme Court's judgment reported as 2015 SCMR 1550 in which ninety days have been prescribed for announcement of judgment.</p> <p>The order was recalled with direction to re-fix the appeal.</p>
<p>2019 PTD 1187</p> <p>[Islamabad High Court]</p> <p>Decided on June 14, 2016</p>	<p>Clause (74), Part I of the Second Schedule to the Income Tax Ordinance, 2001</p>	<p>In this case, the appellant sought intervention of the Hon'ble Court against the order passed by the Appellate Tribunal whereby exemption under Clause (74), Part I of the Second Schedule to the 2001 Ordinance was declined in the amended assessment order.</p> <p>The appellant claimed that profit on 'term deposits' is covered under Clause (74) and the words, 'bank account' and 'account with financial institution' should be read disjunctively.</p> <p>The Hon'ble Court declined to accept the interpretation proposed by the appellant, and held '<u>if the argument of the learned counsel for the applicant that the expression 'bank deposit' is distinct from 'account' offered or maintained with financial institutions is to be accepted, and if both are read disjunctively, then on the basis of ordinary meaning of the former expression any type of deposit would be covered there under, thus rendering the second limb i.e. accounts with financial institution as redundant</u>'.</p> <p>On the above reasoning the appeal was dismissed.</p>

2019 PTD 1219 [Peshawar High Court] Decided on April 05, 2018	133, 122 & 120 of the Income Tax Ordinance, 2001	<p>The facts of the case were that the appellant claimed exemption from minimum tax under section 113 on the basis of Clause (11A), Part IV of the Second Schedule to the 2001 Ordinance.</p> <p>The appellant was allowed relief by the Appellate Tribunal against which the department filed an appeal before the Hon'ble Court contending that the appellant is engaged in the business of manufacturing and sale of beverages, and therefore, exemption is not available.</p> <p>After review of the orders passed by the lower for a, the Hon'ble Court noted that the issue of sale of beverages was never disputed by the department and such issue was also not part of the show cause notice.</p> <p>The Hon'ble Court therefore, declined to interfere with the order of the Appellate Tribunal.</p>
2019 PTD 1227 [Appellate Tribunal Inland Revenue] Decided on February 19, 2015	131 & 140 of the Income Tax Ordinance, 2001	<p>In this case, recovery was made from the taxpayer despite the stay granted by the Appellate Tribunal. The Officer took the stance that the stay order was marked to the Commissioner Inland Revenue, Islamabad instead of the Commissioner Inland Revenue, Rawalpindi. He also stated that recovery has not been affected and the notice under section 140 has been withdrawn.</p> <p>None of the explanation was accepted by the Appellate Tribunal as it was noted that recovery was made by obtaining pay order from the Bank; while the notice of recovery was to be withdrawn subject to realization of the pay order.</p> <p>The Appellate Tribunal ordered immediate refund of the amount recovered and imposed penalty of Rs.50,000 on the Officer, which was ordered to be payable to the Deputy Registrar, Appellate Tribunal from the Officer's own account.</p>
2019 PTD 1235 [Appellate Tribunal Inland Revenue] Decided on January 18, 2015	124, 152 and 161 of the Income Tax Ordinance, 2001	<p>In this case, remand back proceedings were conducted as a consequence whereof, an appeal-effect order was passed, which was maintained by the Commissioner (Appeals).</p> <p>The taxpayer filed a second appeal before the Appellate Tribunal which noted that the taxpayer has already filed an appeal against the earlier order of the Commissioner (Appeals) which is pending adjudication.</p> <p>The Appellate Tribunal held that the Officer acted illegally to conduct the remand proceedings and pass the appeal effect order when the earlier order of the Commissioner (Appeals) is already challenged in appeal. Placing reliance on 2008 PTD 1998, 2002 PTD 1195 and 1985 PTD 375, both the orders below have been cancelled by the Appellate Tribunal.</p>
2019 PTD 1238 [Lahore High Court] Decided on March 28, 2019	114(5) & 122C of the Income Tax Ordinance, 2001	<p>In this case, notice under section 114(5) of the 2001 Ordinance was issued to the taxpayer on 10.02.2015 to file return of income for the tax year 2009. It was contended by the taxpayer that the notice is time barred, whereas the tax department contended that the notice could be issued by 30.06.2015, as the time was to be counted from the last date of the financial year in which the return was to be filed but was not filed. The Officer then issued a notice under section 122C of the 2001 Ordinance which was challenged in a Writ Petition before the Hon'ble Court.</p> <p>The Hon'ble Court held that the time would not run from the date of default, when the return of income was to be submitted, but to be reckoned from 30th day of June, for which period return of income had to</p>

		be submitted but was not done. As such, notices so issued were declared to be time barred.
2019 PTD 1256 [Appellate Tribunal Inland Revenue] Decided on December 12, 2018	2(62), 4(5), 9(5), 11 and 122(5A) of the Income Tax Ordinance, 2001	<p>In this case, the taxpayer was charged with Internally Displaced Persons Tax on income falling under Final Tax Regime.</p> <p>It was held by the Appellate Tribunal that IDPT was payable where the taxable income exceeds rupees one million. Since income falling under FTR is not regarded as 'taxable income' imposing IDPT on such income is against the law.</p>
2019 PTD 1278 [Lahore High Court] Decided on March 13, 2019	9, 22 and 133 of the Income Tax Ordinance, 1979	<p>In this case, non-competition fee received by the taxpayer for not entering into similar business was subjected to tax.</p> <p>In appeal before the Commissioner (Appeals), the assessment order was upheld. However, the Appellate Tribunal held that such amount was capital receipt and unless such amount was hit by the charging provisions of the 1979 Ordinance it could not be subjected to tax. The Hon'ble Court agreed with the findings of the Appellate Tribunal and held that under the law, non-competition fee is considered a capital receipt. Unlike a revenue receipt, which is a substitution of income and is chargeable to tax, a capital receipt is received in exchange for the source of income and is not chargeable to tax unless specifically made taxable by the charging provisions of the taxing law.</p>
2019 PTD 1296 [Sindh High Court] Decided on December 14, 2016	159(3) of the Income Tax Ordinance, 2001	<p>In this case, the petitioner impugned the order passed by the Chief Commissioner Inland Revenue under section 122B of the 2001 Ordinance whereby the order passed by the Commissioner Inland Revenue rejecting the claim of the petitioner for issuance of exemption certificate under section 159(1) read with section 235 of the 2001 Ordinance was upheld.</p> <p>The Hon'ble Court clarified that notifications issued under sub-sections (3), (4) and (5) of section 159 of the 2001 Ordinance which were omitted by the Finance Act, 2015, shall remain enforce, unless rescinded by the FBR.</p> <p>The Commissioner was therefore, directed to re-examine the case of the petitioner strictly in accordance with law and decide the application for exemption from section 235 under SRO 1053(I)/2010 dated 22.11.2010.</p>
2019 PTD 1299 [Supreme Court of Pakistan] Decided on February 11, 2019	13(1) & 47 of the Sales Tax Act, 1990	<p>The case involved the interpretation of SRO 77(I)/95, which allowed exemption from sale tax. The following principles have been discussed –</p> <ul style="list-style-type: none"> As regards provisos, it is well settled that they are intended to qualify the main part of the provisions and carve out an exception from the same, taking out (as it were) something that but for the proviso would be included therein. Such provisos are generally referred to as "true" provisos It is no doubt correct that sometimes a proviso is construed to be substantive clause that operates in its own right. However, such instances are rare, and for a proviso to be so construed the language of the provision must be clear. <p>The Hon'ble Court finally concluded the matter while observing the following –</p> <p>"12. When considered in this perspective, the conclusions arrived at by the learned High Court in relation to the tax</p>

		<p>reference were, with respect, erroneous. In the Appellate Tribunal the taxpayer's appeal was heard by a two Member Bench. The learned Member (Technical) ruled on the factual points in favour of the taxpayer. In particular, the learned Member held that the taxpayer had commenced production within the period stipulated in the second proviso, and that it had done all that was required of it in terms of the Explanation. However, the learned Member (Judicial) disagreed. The matter was accordingly sent to the learned Chairman, who referred the appeal to another learned Member (Technical). The latter agreed with the Member (Judicial). Thus, the taxpayer's appeal was dismissed by a 2:1 majority, with a dispute on the factual aspects of the case. There was therefore, in our view, clearly a question as to whether there had been a misreading or non-reading of the evidence, which was a question of law that came within the scope of a tax reference. It ought to have been so decided. With respect, the learned High Court failed to appreciate this aspect, and treated the tax reference essentially in the same manner as it did the writ petition (as to which see below). Had the learned High Court kept in mind the difference between the two types of proceedings, it would have properly examined the record of the tax reference, in the context of the question of law posited. And had it done that, in our view it would then have found, as we did, that the conclusions arrived by the Member (Technical) who would have allowed the taxpayer's appeal on the factual aspects of the case were clearly correct. The other two Members erred materially in coming to contrary conclusions. In other words, there was a material misreading of the evidence and record, which presented a proper question of law before the High Court. It ought, with respect, to have been so considered. Had that happened then in our view the answer would have been in favour of the taxpayer. The learned High Court therefore erred materially in dismissing the tax reference, out of which C.A. 243/2013 arises.</p> <p>13. The position with regard to the other appeal was however quite different. There, the matter before the High Court was by way of a writ petition. The factual aspects of the case were strongly contested and disputed by the Department. Specific factual allegations were made, which were not properly responded to by the taxpayer. In other words, there were factual controversies and issues that could not be resolved. In such a situation the High Court, quite independently of its conclusions as to the interpretation and application of SRO 77, could have denied relief to the taxpayer. This was, it is to be noted, an additional point taken by the High Court. In our view, it was correct and justified in doing so. There was a material factual dispute between the taxpayer and the Department, and the former had failed to meet the strong and specific averments made by the latter. Therefore, even if the High Court had reached the correct interpretation of SRO 77 and applied it properly it would have been justified, on the facts of the taxpayer's case, in denying relief. In the end therefore, on the facts and circumstances as presented in C.A. 94/2012 no material error was made by the High Court as would require interference by this Court."</p>
2019 PTD 1347	111 & 122 of the Income Tax Ordinance, 2001	In this case the Appellate Tribunal has laid down the importance of 'definite information' for amendment of assessment. It has also been held that a separate notice under section 111 of the 2001 Ordinance is

[Appellate Tribunal Inland Revenue] Decided on October 17, 2018		required to be issued before making additions on account of concealed income/ assets/ expenditure, etc.
2019 PTD 1368 [Sindh High Court] Decided on January 04, 2019	148 & Clause (72B), Part IV, Second Schedule to the Income Tax Ordinance, 2001	In this case, the Hon'ble Court struck down sub-clause (v) of SRO 717/2014 dated 07.08.2014 on the ground that the same is discriminatory and in conflict with the requirements of Clause (72B) of Part V of the Second Schedule. Clause (v) of the SRO discriminated against new importers who have not imported any raw material in the previous tax year.
2019 PTD 1377 [Supreme Court of Pakistan] Decided on May 15, 2019	17 & 32 of the Income Tax Ordinance, 1979	In this case of a banking company, the Hon'ble Supreme Court has held in the context of the provisions of the 1979 Ordinance that offering income from government securities under 'hybrid' system i.e. on receipt basis while the banking company is following mercantile system of accounting, is permissible.
2019 PTD 1414 [Lahore High Court] Decided on April 24, 2019	2(1)(c), 3 & 5 of the Income Support Levy Act, 2013	<p>In this case, recovery of Income Support Levy (ISL) was challenged before the Hon'ble Court on number of points including repeal of the law by the Finance Act, 2014. However, the challenge was not accepted by the Hon'ble Court, and petitions were dismissed.</p> <p>On the contrary, the Hon'ble Sindh High Court, in a recent judgment of Yaqoob Ahmed & Others vs. the Federation of Pakistan reported as [(2020) 122 TAX 27 (H.C.Kar.)] has declared ISL as unconstitutional.</p>
2019 PTD 1453 [Appellate Tribunal Inland Revenue] Decided on November 05, 2018	122 & 111 of the Income Tax Ordinance, 2001	<p>In this case, additions made under section 122(5) were deleted by the Appellate Tribunal after finding that no 'definite information' within the parameters laid down by the Hon'ble Supreme Court in 1993 SCC 1049 were available with the tax department.</p> <p>Further held that the tax department failed to prove that the income claimed as exempt was not from gift, as claimed by the appellant. Further, addition made due to discrepancy in the return of income and record submitted before the Election Commission was also dismissed due to lack of 'definite information'.</p>
2019 PTD 1463 [Sindh High Court] Decided on February 12, 2019	18 of the Income Tax Ordinance, 2001	In this case, security deposits made by broker were treated as taxable by the tax department, and the treatment was upheld by the Appellate Tribunal. On appeal, the Hon'ble Court accepted the contention of the appellant and held that security deposit is not taxable unless the broker defaults and the deposit is forfeited.
2019 PTD 1479 [Supreme Court of Pakistan] Decided on May 15, 2019	65D & 159 of the Income Tax Ordinance, 2001	<p>In this case, the Hon'ble Supreme Court declined the case of the appellant, who was seeking exemption certificate on the basis of entitlement of 100% tax credit under section 65D. It has been held that tax credit is not equal to exemption.</p> <p>In this case, the judgment of the Hon'ble Lahore High Court in Nishat Dairy's case [2013 PTD 1883] has been overturned. The Hon'ble Supreme Court concluded the matter in the following manner –</p> <p>“14. Section 159 applies in respect of amounts that come under Divisions II and III of Part V (of Chapter X) and Chapter XII. A consideration of the provisions therein contained indicate that as used in clause (a) of subsection (1), "exempt" bears the meaning and is deployed in the sense described above. That</p>

		<p>sense is conceptually different from a tax credit. It therefore follows that in our view, since clause (a) of subsection (1) does not apply to a tax credit, no exemption certificate can be issued under section 159 in respect of the latter. The second question must therefore also be answered against the taxpayers and in favour of the Department. (Whether "exempt" is also used in section 159(1)(a) in the sense of clause (d) of subsection (1) of section 53 (i.e., in relation to the fourth part of the Second Schedule) is a matter we leave open for future consideration, since it does not arise here.)</p> <p>15. The foregoing conclusion is bolstered also by the insertion of a new clause (c) in subsection (1) of section 159 by the Finance Act, 2014. This provides for the grant of an exemption certificate when there is a 100% tax credit under section 100C (which applies to nonprofit organizations, trusts or welfare institutions). This specific inclusion in respect of a particular tax credit is also an indication of the legislative intent, i.e., that under section 159(1)(a), "exempt" does not include a tax credit."</p>
<p>2019 PTD 1619</p> <p>[Sindh High Court]</p> <p>Decided on December 24, 2018</p>	<p>120, 122(4)&122(5A) of the Income Tax Ordinance, 2001</p>	<p>In this case, the Plaintiff contended that after filing of return of income on 04.11.2010, the same was treated as a deemed assessment order under section 120, and amended assessment order has already been made on 11.07.2011 and therefore, in terms of section 122(4)(b) of the 2001 Ordinance, any further amendment of an amended assessment order can only be made within one year from the date of amended assessment order. According to him, the impugned show-cause notice was issued much beyond this limitation; hence, it was time barred and therefore, cannot be proceeded further.</p> <p>The Hon'ble Court dispelled the aforesaid contentions and has held that the Commissioner Inland Revenue has rightly issued the show cause notice, and observed as under –</p> <p>"10. The above observations clearly spell out the intention of the legislature as contemplated in Section 122(4) <i>ibid</i>, and the two different limitation periods provided therein, and I am fully in agreement with such observation of the learned Lahore High Court. There is another aspect of the matter which has been briefly discussed in the preceding part of this opinion. And that relates to first filing of a return and treating the said return as a deemed assessment order in terms of Section 120 of the Ordinance, 2001. After filing of return and treating it as a deemed assessment order, there are two different situations and circumstances under which the said deemed assessment order could be amended for the first time. The first is provided under section 114(6) of the Ordinance, 2001, whereby the tax-payer himself can file a revised return and pay the extra tax accordingly. Now this filing of a revised return by the tax-payer itself is also treated as an amended assessment of the deemed or original assessment in terms of Section 122(3)(a). Therefore, if the interpretation as advanced on behalf of the Plaintiff is accepted as correct, then every tax-payer would file a revised return, immediately after filing of return and its treatment as a deemed assessment order, and such revised return which otherwise is to be treated as an amended assessment order, would permit the tax-payer to have the limitation period as against any further amendment of an assessment order, reduced to one year from the said amended assessment order,</p>

		<p>invariably. This would then be absurd and will give undue advantage to the tax-payer as against the wishes of the legislature and will also defeat the purposive interpretation of a statute. It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved.”</p>
2019 PTD 1652 [Peshawar High Court] Decided on April 03, 2019	53, 159 & Second Schedule to the Income Tax Ordinance, 2001	<p>In this case, question was placed before the Hon’ble Court related to interpretation of the terms “exemption from payment of tax” and “exemption from certain provisions of tax” which was provided to individuals, association of persons and companies located in the erstwhile FATA in the light of Article 246 of the Constitution of Islamic Republic of Pakistan and SRO 887(I)/2018 dated 23.07.2018.</p> <p>The Hon’ble Court declared that after amendment in the Constitution, immunity from taxes still existed as the Federal Government intended to keep the situation as it existed prior to the Constitutional amendment.</p> <p>The Hon’ble Court held that petitioners are not liable to pay any tax which was not applicable prior to the Constitution (Twenty fifth Amendment) Act, 2018 and declared collection of advance tax on electricity bills as illegal.</p>
2019 PTD 1678 [Sindh High Court] Decided on May 31, 2019	122 of the Income Tax Ordinance, 2001	<p>In this case, the petitioners challenged the issuance of show cause notice under section 122(5A) on the ground that initiating an inquiry (which power was inserted vide the Finance Act, 2012 applicable to the tax year 2013 and onward) cannot be exercised by the Additional Commissioner for the tax year 2012.</p> <p>The Hon’ble Court held that even though powers to conduct inquiry were not available for the tax year 2012 but the Commissioner Inland Revenue was empowered to amend the assessment order under section 122 (5A) of the 2001 Ordinance, if the assessment order was found to be erroneous or prejudicial to the interest of revenue subject to fulfillment of the requirements envisaged under sub-section (9) of section 122 of the 2001 Ordinance.</p> <p>The petition was dismissed with specific directions to the respondent to provide fair opportunity to the petitioners to defend the show cause notices.</p>
2019 PTD 1734 [Lahore High Court] Decided on April 17, 2018	49 & 122 of the Income Tax Ordinance, 2001	<p>In this case, the petitioner – Rawalpindi Development Authority sought exemption from income tax under section 49 of the 2001 Ordinance.</p> <p>The Hon’ble Court after hearing the arguments of both the counsel held that the petitioner being a body corporate under sub-section (4) of Section 49 of the 2001 Ordinance was not entitled to exemption from payment of income tax as it does not enjoy the status of federal government or a provincial government.</p>
2019 PTD 1741 [Appellate Tribunal Inland Revenue]	120, 122(5A) and 153(6) of the Income Tax Ordinance, 2001	<p>In this case, the appellant contended before the Appellate Tribunal that the action of the Additional Commissioner to amend the assessment order under section 122(5A) of the 2001 Ordinance for the second time is contrary to law.</p>

Decided on August 30, 2018		<p>The Appellate Tribunal relied upon the judgment reported as 2016 PTD (Trib.) 722 and held that the Commissioner (Appeals) was bound to follow the judgment of the Division bench of the Appellate Tribunal reported as 2014 PTD (Trib.) 484.</p> <p>The Appellate Tribunal also held that resorting to section 122(5A) for the second time tantamount to change of opinion which is not permissible under the law.</p>
2019 PTD 1811 [Lahore High Court] Decided on May 23, 2019	21(e)& 34(3) of the Income Tax Ordinance, 2001	<p>In this case, the tax department being aggrieved with the decision of Appellate Tribunal preferred a reference application before the Hon'ble Court contending that deletion of addition made by the tax department by disallowing expenditure with respect to provision of gratuity payments by the Appellate Tribunal is contrary to the mandate of section 21(e) of the 2001 Ordinance.</p> <p>The Hon'ble Court decided the reference in favor of the tax department.</p>
2019 PTD 1828 [Lahore High Court] Decided on April 18, 2019	111, 122 & 133 of the Income Tax Ordinance, 2001	<p>The Hon'ble Court while relying upon 2010 PTD 704 and 2017 PTD 1839 held that addition under section 111 could not be made without seeking explanation from the taxpayer through a separate notice.</p>
2019 PTD 1882 [Lahore high Court] Heard on June 13, 2019	5 & 8 of Voluntary Declaration of Domestic Assets Act, 2018	<p>In this case, declaration made by the taxpayer under section 5 of the Voluntary Declaration of Domestic Assets Act, 2018 was rejected by the tax department, and a show cause notice was issued which was challenged by the taxpayer through a Writ Petition.</p> <p>The Hon'ble Court accepted the petition and set aside the notice issued by the respondent department while observing as under –</p> <p>“In terms of the explanation it has been clarified that a declaration can be made even in respect of undisclosed income or assets which are pending in proceedings under the Ordinance until they have attained finality. The basic purpose of the explanation is to clarify that even where proceedings are pending under the Ordinance, related to assessment or otherwise the taxpayer can make a declaration of undisclosed income or assets upto the point when those proceedings attained finality. There is no cavil to the contention that proceedings under the Ordinance attain finality when the right of appeal has been exhausted by the taxpayer and an order has been passed by the appellate forum. The taxpayer case does not attain finality until it has exhausted all remedies of appeal available under the Ordinance. For the purposes of challenging the assessment order, the case relied upon by the Petitioner clarified that an order of assessment is not a final order for the reasons that it can be challenged in an appeal or revision as the case may be as it only becomes final when it goes through all the forums and remedies available under the law. Hence a taxpayer is entitled to pursue the remedy of appeal or second appeal as such remedies reopen the assessment, meaning that it is not final unless it crosses all forums under that law in which it can be challenged and the order of the last forum is final. Therefore, under the circumstances, the contention of the petitioner is in accordance with law and the rejection made by the respondents is without any legal basis. In this case assessment order was passed by respondent No.3, Deputy Commissioner Inland</p>

		Revenue, which has not attained finality as it is subject to an appeal irrespective of the recovery proceedings. Since the order has not attained finality, the petitioner can file a declaration under section 5 of the Act.
2019 PTD 1898 [Appellate Tribunal Inland Revenue] Decided on April 10, 2019	182, 114 & 214E of the Income Tax Ordinance, 2001	<p>In this case, the appellant challenged the imposition of penalty under 182 of the 2001 Ordinance.</p> <p>It was held that the tax department cannot be allowed to use provisions of section 182 as a substitute of normal assessment or new source of revenue/ tax generating provisions.</p> <p>The appeal was partly allowed and penalty was restricted to Rs.25,000.</p>
2019 PTD 1902 (Federal Tax Ombudsman) Decided on May 21, 2019	140 of the Income Tax Ordinance, 2001	<p>In this case, the Deputy Commissioner Inland Revenue, Abbottabad illegally attached the bank account of a complainant who was being assessed to tax at RTO-II, Karachi. Being aggrieved with the procedural loopholes, the complainant lodged a complainant with the Federal Tax Ombudsman to have the amount refunded so illegally recovered through attachment of his bank account along with damages on account of expenses to get the refund of illegal recovery under section 140 of the 2001 Ordinance.</p> <p>The Federal Tax Ombudsman directed the Federal Board of Revenue to recover the impugned amount from the Deputy Commissioner and pay the same to the complainant along with additional payment for delayed refund under section 171 of the 2001 Ordinance.</p>
2019 PTD 1912 [Supreme Court of Pakistan] Decided on April 24, 2019	153(6) of the Income Tax Ordinance, 2001	<p>The facts of the case are that the appellants being Association of Persons (AOPs) were engaged in the business of manufacturing and supplying auto parts. They filed their returns of income for the tax year 2008 under the Normal Tax Regime and claimed refund/ adjustments of withholding tax under section 153 of the 2001 Ordinance. The Additional Commissioner exercising his jurisdiction under section 122(5A), questioned the appellants' legal status to avail NTR, by serving notices upon them, asserting therein that their cases would fall under the Presumptive Tax Regime, whereby tax deducted at the time of making payments would be deemed their final tax liability under sub-section (6) of section 153 of the 2001 Ordinance. Amended assessment orders were passed accordingly.</p> <p>However, the Appellate Tribunal set-aside the amended assessments, against which the tax department moved reference applications before the High Court on the sole question of law, as to:</p> <p style="padding-left: 40px;">"Whether the learned Appellate Tribunal Inland Revenue was justified in holding that the income of the taxpayer not covered under presumptive tax regime in the light of provisions of Section 153(6A)?"</p> <p>The Hon'ble Court answered the above question in the negative, declaring that the appellants were to declare their income under the presumptive tax regime, as provided for under sub-section 6 of section 153 of the 2001 Ordinance. It was further explained that the amendment introduced in sub-section (6A) vide the Finance Act, 2008 would apply to the cases of the present appellants, and they would thereby not fall within the exceptions to the presumptive/final tax regime provided under sub-section (6A) of section 153 of the 2001 Ordinance.</p> <p>The Hon'ble Supreme Court however, held that the High Court erred in</p>

		<p>not considering the settled principle of interpretation of fiscal statutes and upheld the decision of the Appellate Tribunal in favor of the taxpayer.</p> <p>The taxpayer was allowed to be assessed under the normal tax regime and not the presumptive tax regime.</p>
2019 PTD 1922 [Lahore High Court] Decided on June 27, 2019	214C of the Income Tax Ordinance, 2001	<p>In this case, the petitioners requested that the audit parameters on the basis of which, the petitioners were selected for audit should be disclosed. The Commissioner Inland Revenue denied the request in view of section 214C(1A) of the 2001 Ordinance.</p> <p>The Hon'ble Supreme Court declared selection of petitioner's cases for audit under section 214C to be illegal and without lawful authority and directed the tax department to first disclose the parameters adopted for selection of cases for audit.</p>
2019 PTD 1994 [Lahore high Court] Decided on October 18, 2016	133 & 113 of the Income Tax Ordinance, 2001	<p>In this case, the Commissioner Inland Revenue disallowed the adjustment of minimum tax paid under section 113 of the 2001 Ordinance in prior years. Being aggrieved, the appellant preferred appeal with the Commissioner (Appeals), who, without looking into the merits of the case confirmed the order of the Commissioner Inland Revenue.</p> <p>The taxpayer challenged the decision of the Commissioner (Appeals) in appeal before the Appellate Tribunal. The case was discussed in detail and it was held that minimum tax paid under section 113 is adjustable under section 113(2)(c) of the 2001 Ordinance.</p> <p>The tax department made a reference to the Hon'ble Court, where the decision of the Appellate Tribunal was upheld.</p>
2019 PTD 2001 [Supreme Court of Pakistan] Decided on September 05, 2019	122(8) and 122(1) of the Income Tax Ordinance, 2001	<p>In this case, amended assessment order was passed in view of definite information obtained through a source which was already available relying upon 2017 SCMR 1414.</p> <p>The Hon'ble Supreme Court held that using the information voluntarily provided by the taxpayer could not be deemed as definite information.</p>
2019 PTD 2072 [Supreme Court of Pakistan] Decided on January 31, 2019	182 of the Income Tax Ordinance, 2001	<p>In this case, the tax department filed a reference application to the Hon'ble Supreme Court and put forward the question of law whether the default by an assessee to file his return of income within the prescribed time attracts penalty under section 182 when there was no tax payable along with the return of income.</p> <p>The Hon'ble Supreme Court answered the question in negative, since the tax payable was already deducted at source hence the penalty could not be levied.</p>
2019 PTD 2082 [Islamabad High Court] Decided on March 08, 2019	131(5) of the Income tax Ordinance, 2001	<p>In this case, the appellant sought extension of stay against recovery which was denied by the Appellate Tribunal in view of the second proviso to sub-section (5) of section 131 read with sub-section 2A of section 132 of the 2001 Ordinance.</p> <p>The Hon'ble Court held that the time line provided in the second proviso to section 131(5) read with sub-section 2A of section 132 of the 2001 Ordinance is directory and not mandatory, hence the petition was allowed and case was remanded back to the Appellate Tribunal.</p>
2019 PTD 2162	120, 122(5A) & 177 of the	<p>In this case, the Commissioner Inland Revenue amended the deemed assessment order considering the revised return of the taxpayer as</p>

[Appellate Tribunal Inland Revenue]	Income Tax Ordinance, 2001	erroneous and prejudicial to the interest of revenue. It was held that the tax authorities could not seek details, documents and explanation to justify action under section 122(5A) of the 2001 Ordinance as same was against the spirit of law.
Decided on August 20, 2018		

SYNOPSIS OF IMPORTANT CASE LAWS

INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
[2019] 120 TAX 216 2019 PTD 764 Lahore High Court Decided on February 06, 2019	Section 11(5), 45B, 74 of the Sales Tax Act, 1990	Vide this judgment issue whether an assessment of time barred tax periods can be done by condoning/extending the time limit in terms of section 74 of the Act has been decided. In the instant case, time limit prescribed under Section 11(5) of the Act was condoned under Section 74 ibid to initiate tax assessment proceedings for the tax periods from July 2001 to June 2005 vide Showcause notice dated 25 January 2016. It has been held that Section 74 of the Act cannot be applied or approached for seeking extension or condonation to revive a past and closed transaction / matter, wherein time-limit had already lapsed and the proceedings initiated vide Showcause notice dated 25 January 2016 has been held as illegal.
[2019] 120 TAX 360 2019 PTD 884 Lahore High Court Decided on February 18, 2019	Section 46 & 47 of the Sales Tax Act, 1990	In this verdict, the Honorable Court enunciated the principle that a remand order whereby the Appellate Tribunal has not determined anything through conclusive finding of fact, does not generally give rise to any question of law to be determined by the Court exercising its advisory jurisdiction. Accordingly, reference application against remand order of Appellant Tribunal was decided against the Applicant.
[2019] 120 TAX 340 Peshawar High Court Decided on April 03, 2019	Section 3(1A), 3(5), 13(2) of Sales Tax Act, 1990 & Section 53, 159, 235 & 235B of the Income Tax Ordinance, 2001	In this case various industrial units established in erstwhile FATA region sought intervention from the Peshawar High Court on the issue of collection of advance income tax, sales tax, further tax and extra tax along with electricity bills contending that they being resident of FATA are immune from payment of any tax for five years as they were exempt before the 25 th Constitutional Amendment. Whereas, the respondents were of the view that after omission of Article 247 and relevant changes in the Article 246 of the Constitution of Pakistan, such persons were under obligation to obtain specific exemption certificate from the concerned Commissioner. The Honorable Court while interpreting the exemption notifications namely SRO(I) 1212/2018 & SRO(I) 1213/2018 held that the inhabitants of defunct FATA have been given "exemption applicability of provision of payment of tax" instead of "exemption from tax". Therefore, such persons are not required to obtain any exemption certificate. Accordingly, collection of advance tax along with electricity bills from such industrial units was declared illegal.
[2019] 120 TAX 74 2019 PTD 1890	Section 73 of the Sales Tax Act, 1990	It has been held in the judgment that compliance of Section 73 of the Sales Tax Act, 1990 to the extent of making payment through banking

<p>Lahore High Court</p> <p>Decided on April 10, 2019</p>		<p>channel is mandatory provision and accordingly such input tax may be disallowed with respect to which the payment has not been made through proper banking channel.</p> <p>The judgment also provides ratio decidendi in detail to determine the mandatory or directory provisions under the law.</p> <p>The summary points of the decision given by the Honorable Bench is given as under:</p> <ul style="list-style-type: none"> It is an established principle of law that where the Legislature has provided a penalty/consequence for the non-compliance, the said provision would be mandatory in nature and where such consequences are not provided it would be termed as directory. Reference in this behalf is made to the case of Maulana Nur-ul-Haq v. Ibrahim Khalil (2000 SCMR 1305) It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory, especially when an authority is required to do something in a particular manner. Reference is made to Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited (PLD 2012 Supreme Court 247)
<p>[2019] 120 TAX 46 2019 PTD 1493</p> <p>Lahore High Court</p> <p>Decided on April 23, 2019</p>	<p>Section 2(25), 3,14, 22, 23 of the Sales Tax Act, 1990</p>	<p>The primary controversy before the Court in various references and connected petitions decided through this consolidated judgment was whether the tax authorities can assess and recover the tax chargeable under the Sales Tax Act, 1990 from persons liable to be registered but not registered without getting such persons compulsorily registered first.</p> <p>It has been held that the combined reading of relevant provisions of the Sales Tax Act, 1990 and corresponding Rules reveals that intention of the law legislature is clear that where a person is liable to be registered the tax department is required to register that person compulsorily or otherwise in accordance with law and then charge sales tax from it under Section 3 of the Act and may proceed against that person regarding prior to registration contravention of the provisions of the Act, if any.</p>
<p>[2019] 120 TAX 296 2019 PTD 2209</p> <p>High Court Karachi</p> <p>Decided on August 02, 2019</p>	<p>Section 2(16), 7(2) & 8B of the Sales Tax Act, 1990</p>	<p>Through this judgment, honorable High Court has decided the controversy whether the import of packing material for use in pharmaceutical products is entitled for exemption from payment of sales tax as a "raw material" in the terms of Entry No.105 of the 6th Schedule to the Sales Tax Act, 1990.</p> <p>While dilating upon the controversy the Court observed that while interpreting the taxing statutes the Court must look to the words of the statute and interpret them in the light of what is clearly expressed; it cannot import provisions in the statute so as to support assumed deficiency. Principle of "Casus Omissus", that a matter which should have been but has not been provided for in a statute cannot be supplied by Courts, as to do so will be the legislation and not construction, has been followed.</p> <p>Accordingly, it has been held that such packing material was not entitled for exemption from payment of sales tax in the terms of Entry No.105 of the 6th Schedule to the Sales Tax Act, 1990.</p>
<p>[2019] 120 TAX 244</p> <p>Sindh High Court</p>	<p>Section 28 of Sindh Sales Tax on</p>	<p>In this case, registered person had assailed selection of its case for audit under Section 28 of the Sindh Sales Tax on Services Act, 2011 [SSTSA, 2011] primarily on the ground that the tax officer has no authority under</p>

Decided on November 09, 2018	Services Act, 2011	<p>the law to select the case for audit without assigning any reason and conduct audit at registered persons' premises by filing a civil suit.</p> <p>The Honorable Court while disposing of the case opined that as per the mandate of law the officer has to examine the returns at least tentatively and then to make a decision that for such and such reasons there is some defect or lacuna in filing of returns and payment of tax accordingly, which requires conduct of Audit. Since, the very provision of law requires the officer to make a <u>decision</u> of audit and <u>a decision without reasons is in fact no decision in the eyes of law.</u></p> <p>As regard to second issue it was held that the concept of conducting audit at taxpayers' premises was alien to the law and nowhere such power or authority has been provided, hence no audit in such manner can be conducted.</p> <p>It is noteworthy that pursuant to this judgment a proviso to the Section 28(2) of the SSTSA, 2011 was added via Sindh Finance Act, 2019 whereby the officer of SRB has been empowered to conduct audit at registered persons' business premises subject to permission of concerned Commissioner.</p>
[2019] 120 TAX 417 Supreme Court of Pakistan Decided on May 22, 2019	Sindh Sales Tax Ordinance, 2000 & SSTSA	<p>The judgment pertains to the validity and application of exemption notification issued under Sindh Sales Tax on Services Act, 2011 on liability established under the repealed Sindh Sales Tax Ordinance, 2000.</p> <p>The petitioner was under obligation to pay principal amount, default surcharge and penalty under the repealed Sindh Sales Tax Ordinance, 2000. The petitioner deposited the principal amount and availed the benefit of exemption notification issued by Sindh Revenue Board vide SRB-3-4/6/2014 dated 17 April 2014 for waiver of whole amount of penalty and 95% default surcharge.</p> <p>The High Court decided the case against the petitioner and directed FBR to recover the penalty and default surcharge from petitioner and transfer to Sindh Government in the same manner as it used to do before the year 2011.</p> <p>Being aggrieved, the petitioner approached Supreme Court of Pakistan against the High Court order, wherein it was held that the Sindh Sales Tax on Services Act, 2011, had repealed the Sindh Sales Tax Ordinance, 2000 but by virtue of section 83 which accrued there under some matters to be administered by the Sindh Revenue Board, including the power to issue notifications exempting the collection of sales taxes on service, accrued penalties and default charges and set aside the order of High Court.</p>
2019 PTD 1589 Islamabad High Court Decided on May 25, 2019	Section 3A, 16 Of Federal Excise Act, 2005 and SRO 655(I)/2007 dated 29 th June 2007	<p>Through this judgment the honorable High Court Islamabad has decided a crucial issue of classifying food prepared and served in hotels and clubs as supply of "goods" or "service".</p> <p>Relying on various judgments of Indian Jurisdiction and a circular issued by the ministry of law, the honorable High Court held that food preparation in hotels/clubs is not manufacturing or production of goods rather it is services to visitor of hotel or member of club.</p>
2019 PTD 1885 Appellate Tribunal PRA	Section 48 of the Punjab Sales Tax on Services Act, 2012	<p>In this case Appellant was registered compulsorily, subsequent to such registration, the tax officer imposed penalty for non-registration and failure to file sales tax returns.</p> <p>The learned Tribunal while deciding the case observed that, since the</p>

Decided on March 14, 2019		appellant had already been registered before the receipt of show cause, therefore, there was no mens rea or willful default on part of the appellant. It has been held that under the law penalty proceedings are criminal in nature and standard to proof which is required in a criminal case is also required to sustain the order imposing penalty and bona fide belief on part of assessee on the point of fact or law entitles him to the benefit of doubt. The intention of legislature has ever been is that purpose of levying penalty is to deter assessee from repeating the default in future but it cannot be made as a resource mobilization /revenue generation measure. According order of imposing the penalty was set aside.
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REVIEW OF COMPANIES (AMENDMENT) ACT, 2020 AND COMPANIES (GENERAL PROVISIONS AND FORMS) REGULATIONS 2018 BY MRS. HANNIA EHTISHAM

Since year 2018 Pakistan is struggling to come out of FATF's grey list which had identified Real-Estate and Bullion as sectors potentially threatening global CTF/AML measures. In this backdrop Pakistan had lately amended over a dozen laws besides introducing a couple of new legislations to remove gaps and made them in line with international practices. Off late Pakistan was still found deficient in six of FATF's 27-point action plan which largely stressed for implementation/enforcement.

This Memorandum however provides a brief overview of significant amendments made in Companies Amendment Act 2020 and correspondingly in rules via SRO No. 928(I)/2020 dated 28 September 2020

- Section 60A was inserted to prohibit sale, purchase and transfer of bearer securities to promote digital record keeping. Correspondingly Regulation 16A is inserted to Regulation 2018 which provides for procedure for registration and cancellation of bearer securities via Form 40 and Form 41.

Review of Regulation 16A

Regulation 16A(1) obligates a company, which had issued any equity/ debt security of a bearer nature, to publish a three months' notice in at least one English and one Urdu Daily Newspaper calling/requiring holder(s) of bearer securities to surrender them to the company for their registration in the name of holder(s).

It further provides that every person who is the holder of any security of a bearer nature, is required to surrender the same to the company, within three months of the publication of the notice by the company. In the event, the holder of any security fails to surrender the same to the company within the period noted above, the company must, within three months from the deadline for surrender of such securities, apply to the Court for an order for cancellation of the security in accordance with the Section 89 of the Act. In addition, the company is also required to publish a notice, in at least one English and one Urdu language Daily newspaper having wide circulation in the province in which the registered office of the company is situated intimating the fact that an application has been made to the Court (as defined in the Companies Act) under Regulation 16A(4), within fourteen days of such application.

In the event any security of a bearer nature is in fact surrendered for registration, the company is required to enter the name of the holder in the register of members or the register of debentures, as the case may be, in respect of securities represented by the instrument in accordance with the terms thereof subject to such enquiry as may be deemed appropriate by the company. Such surrender is required to be recorded by the company in the next annual return of such company.

In addition to the obligations set out above, it must be noted that a company which has issued securities of a bearer nature prior to the Amendment Notification, is required to prepare and maintain a register of number of such securities in the form and manner provided in Form 41 including containing particulars of holders of such securities, the date of their issue, surrender and cancellation, if any under Regulation 16A.

- Section 123A was inserted to identify the ultimate beneficial ownership of company and sharing information with SECP in Forms 42, 43, 44 and 45, additionally a penalty of one million rupees has been provided for non compliance. Practical aspect of Sec.123A are however provided in Regulation 19A

Review of Regulation 19A of the Regulations

Regulation 19A now provides the mechanism of maintaining information of its ultimate beneficial owners.

Regulation 19A(1) obligates every company to take reasonable measures to identify and obtain the information of its ultimate beneficial owners, in the form provided in Form 42, within three months of enforcement of Section 123A of the Companies Act by issuing a notice to every member who directly holds at least twenty-five percent of shares or voting rights in the company or to the representative of every legal person or legal arrangement which holds at least twenty-five percent of shares or voting rights in the company.

In response to the notice by the company under Regulation 19A(1) every person to whom the notice has been issued, is required to submit a declaration to the company in the form provided in Form 43, within fourteen days of the notice, indicating the name, address, and other particulars as specified in Form 43 which are necessary to identify the ultimate beneficial owner. In the event of any person becoming a new member of a company, such person is also required to submit such information within fourteen days of his name being entered in the register of members.

Similar procedure is provided in the event of any change in the particulars of ultimate beneficial owners or his ownership of the company by way of declaration in Form 44, stating the nature of change and other particulars as provided therein.

Upon receiving the response of such person, the company is then required to make a note of such response in a register of ultimate beneficial owners containing the particulars as are provided in Regulation 19A(4). In addition, such company is required to submit to the concerned registrar a declaration of compliance in the form provided in Form 45 within fifteen days of receiving information from the person noted above and thereafter along with its annual return. In case of a listed company such form is also required to be submitted to the SECP.

For the purpose of the regulations, the term “ultimate beneficial owner” means a natural person who ultimately owns or controls a company, whether directly or indirectly, through at least twenty-five percent shares or voting rights or by exercising control in that company through other means. The term “control through other means” has been defined as “control through other means may be exercised through a chain of ownership or through close relatives or associates having significant influence or control over the finances or decisions of the company.”

- Section 413(2) is amended to enhance the timeline of liability on liquidators in case of dissolution of a company from three to five years thus effectively the liquidators now have to keep record of a dissolved company upto five years.

Review

Finally, amendments have been made to section 431 pertaining to the disposal of books and papers of a company. It needs to be noted that no responsibility will lie on the company or the liquidators or anyone managing the books once five year time has lapsed from the dissolution of the company.

ALTERNATIVE DISPUTE RESOLUTION BY SYED FAIQ RAZA RIZVI



Over the years parochial legislations paired with subjective adjudications have resulted in a rising caseload over the traditional justice system. Alternative dispute resolution (ADR) or Collaborative Dispute Resolution (CDR) thus in all formats (negotiation, mediation, conciliation & arbitration) has increased in popularity with parties appearing to prefer it over courts for being quick, inexpensive, and flexible. Most sensible regimes who endorse transparency are increasingly encouraging the use of ADR in place of an arduous & adversarial appeal system. Empirical researches in various domains have concluded that the perceptions of those involved in the ADR processes were generally very positive.

Owing to the confidential character of ADR process the theme has gained considerable traction in tax & commercial disputes where issues were broadly misunderstood or otherwise are decided on incomplete evidence at administrative levels. Tax administrators have started realizing that the personal involvement of an aggrieved person in ADR process not only helps to minimize trust deficit but also allows him a fair understanding of the taxation system/tax responsibilities and encourages correct reporting. The congenial character of ADR is otherwise bilaterally taken as a win-win situation.

In Pakistan the need for a functional ADR protocol in direct and indirect taxation is even more important where overstepping on the part of tax administrators is rampant and tax disputes are broadly seen by courts under the microscope of the Constitution thus leaving tax measures in limbo for years. Albeit ADR legislation is formally embedded in all federal tax statutes and broadly sans in Provincial counterparts but the high degree of complexity & ambiguity in the provisions is hardly able to register any significant progress, maybe ever. Through Finance Act, 2020 a drastic approach is made to fancy “alternate dispute” in direct and indirect tax laws as more attractive & appealing however the two conditions [1] requirement of a dispute “pending” before appellate authority/court of law and [2] Resolution of the dispute by three-member ADR committee with “consensus” are still seen as a barrier in the success of the scheme. Needless to add that countries like UK, Australia, India have offered greater leeway on the subject where the taxpayer may call for ADR as early as upon issue of show cause notice ostensibly without filing an appeal and entering into the ADR process do not affect its review/appeal rights.

To make the ADR scheme a success in Pakistan it should have definite & unambiguous initiative where the condition of pendency of a dispute before the appellate forum should be done away with viz.a.viz majority decision of three-member ADR committee should be binding else appealable bilaterally before the second appellate forum. It should also progressively contain options that may inter-alia include tax reductions & immunity from penal levies even in legally clear cases viz.a.viz opportunity to clear tax arrears in instalments. As a starting point to settle tax disputes and to clear the backlog of tax arrears the Government in Pakistan may take advantage of India where this situation was arrested by enacting special laws viz. The Direct Tax Vivad Se Vishwas Act, 2020, and Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 which generally has yielded acceptable results.