

# E-News & Views

NV # 02/2020  
2020

## A Publication of KTBA

July 2020 to December 2020

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

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**FROM THE DESK OF THE PRESIDENT**

My Dear Members,

I am very happy to inform you all that towards the end of our tenure, the third edition of E-News and Views has been successfully published by the sub-committee covering the period from July 2020 till December 2020 for which they deserve three cheers!!! This is the first time that any sub-committee has not only covered its own tenure but has also covered the back-log. This edition in your hands has been done due to dedicated efforts of the entire sub-committee comprising of Mr. Abdul Wahab, Mr. Atif Nawaz, Mr. Ejaz Ahmed Bhutta, Mr. Hameer Arshad Siraj, Mrs. Hannia Ehtisham, Mr. Muhammad Mehmood Bikiya, Mr. Shiraz Khan and their very able leader Mr. Haris Tufail (convener).

We hope the efforts made by Haris and his team would be followed by the incoming sub-committee.

We have tried to cover all the important Judgments, Circulars and SROs, however, we would welcome suggestions and positive criticism for the betterment of future publications!

Annual General Meeting (AGM) and Elections are right down the corner. Everyone must come and attend the AGM.

Stay safe and happy reading!

Yours in service,

**Muhammad Zeeshan Merchant**

**FROM THE DESK OF THE CONVENER**

Dear Fellow Members,

Near the eve of completion of the term of the current Executive committee and its facets, it is a pleasure to announce the release of the third publication of E-News & Views of this Committee.

It was only the coordinated and concerted team effort enabling this sub-committee to complete the publications of 21 months in a limited active tenure of only around five months.

We have compiled in this issue, Circulars, SROs and General Orders concerning revenue laws of the Country issued from July 2020 till December 2020. This publication also covers circulars and notifications issued by Sindh Revenue Board. In addition, important case law dealing with Sales-tax, Federal Excise and Direct Tax are also part of this publication.

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.

The rein will now be with the new committee however, I assure the members that the pursuit to create an invaluable resource center for the members is enduring.

Hope the year 2021 and the many years to follow will bring happiness, peaceful and pleasures for all of us.

Yours in service,

**Haris Tufail**

## DIRECT TAX CIRCULARS AND SROs

### Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
	August 13, 2020	Operationalization of budgetary measures in Finance Act, 2020.
02 of 2020	August 18, 2020	To clarify that, the rate of advance tax under section 148 of the Income Tax Ordinance, 2001 [Ordinance] in case of good imported by manufacturers covered under the rescinded S.R.O 1125(1)2011 shall be 1% irrespective of whether such goods are classified in Part II or III of Twelfth Schedule.
03 of 2020	September 03, 2020	Explanations regarding amendments made in the Ordinance vide Finance Act, 2020.
04 of 2020	September 30, 2020	Extension in due date of filing of returns for the tax year 2020 up to 8th December 2019.
05 of 2020	September 30, 2020	Guidelines on introduction of new online system of issuance of exempt/reduced rate certificate u/s 152(4A), 152(4B), 152(5) and 159 of the Ordinance.
06 of 2020	December 09, 2020	To clarify that in order to avail exemption from withholding tax on profit on debt to the extent of deposit made exclusively from foreign exchange under Clause 79 of Part 1 of Second Schedule of the Ordinance, the account holder is required to be Pakistan citizens living abroad and profit on debt may be in no way attributable to local deposit in same account.
07 of 2020	December 22, 2020	Clarification regarding provision of certificate by recipient of profit on debt to the payer in order for withholding tax rate to apply at 10% instead of 15% in case profit on debt is PKR 500,000 or less under section 151 of the Ordinance.
08 of 2020	December 30, 2020	Extension in date of furnishing of taxpayer's profile under section 114A of the Ordinance till 31 March 2021.

### Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
615(I)/2020	July 09, 2020	Draft rules regarding import under section 148 of Income Tax Ordinance, 2001 [Ordinance].
642(I)/2020	July 28, 2020	Direction regarding application of section 148 of the Ordinance on import of wheat.
686(I)/2020	August 05, 2020	Draft rules 39A to 39F under Chapter VIIIA of the Income Tax Rules, 2002 [Rules] relating to common reporting standard under section 165A of the Ordinance.
715(I)/2020	August 12, 2020	Final amendments in respect of import under section 148 of the Ordinance.
745(I)/2020	August 19, 2020	Draft income tax return forms for salaried persons, AOPs, companies and business individuals for tax year 2020.

SRO REFERENCE	DATE	SUBJECT
816(I)/2020	August 20, 2020	Protocol to amend the existing convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Pakistan and Bahrain.
750(I)/2020	August 20, 2020	Exemption of taxes from import of refined white sugar.
771(I)/2020	August 24, 2020	Reduced rate of income tax on import of sugar.
773(I)/2020	August 24, 2020	Amendments in rules on 'Banking Companies Reporting Requirements Rules' and 'Common Reporting Standards'.
772(I)/2020	August 24, 2020	Exemption from taxes on import of oxygen gas, oxygen cylinders and cryogenic tanks.
780(I)/2020	August 26, 2020	Amendment in rule 231 C of the Rules.
779(I)/2020	August 26, 2020	Rules relating to online integration of businesses vide chapter VIIA of the Rules.
771(I)/2020	August 26, 2020	Corrigendum in SRO 771 dated August 24, 2020.
810(I)/2020	September 04, 2020	Notifications of persons for constitution of committees for Alternate Dispute Resolution (ADRC).
822(I)/2020	September 08, 2020	Final income tax return forms for business individuals, salaried persons, AOPs, individual paper return and companies for tax year 2020.
823(I)/2020	September 08, 2020	Draft procedure and manner for applying and approving 'Green Field Industrial Undertaking' -Chapter XVIIA of the Rules.
821(I)/2020	September 08, 2020	Draft simplified income tax return for retailers having turnover less than Rs. 10 million.
845(I)/2020	September 10, 2020	Amendment in Rules 231C of the Rules.
863(I)/2020	September 14, 2020	Procedure for obtaining exemption certificate under section 152 of the Ordinance.
885(I)/2020	September 17, 2020	Final simplified income tax return for retailers having turnover less than Rs. 10 million
887(I)/2020	September 18, 2020	Final rules regarding procedure and manner for applying and approving 'Green Field Industrial Undertaking'.
924(I)/2020	September 29, 2020	Rules for 'Designated Non-Financial Businesses and Professions' (DNFBPs).
922(I)/2020	September 29, 2020	Exemption from taxes at import stage in respect of procurement of 83xMicron sprayers for Anti-Locust.
923(I)/2020	September 29, 2020	Procedure for obtaining exemption certificate under section 152 of the Ordinance.
954(I)/2020	October 02, 2020	Draft rules for agreed assessment under section 122D of the Ordinance.
1020(I)/2020	October 07, 2020	Rescission of SRO 947(I)/2008 dated 5th September, 2008.

SRO REFERENCE	DATE	SUBJECT
954(I)/2020	October 12, 2020	Corrigendum in SRO 954 dated October 02, 2020.
1041(I)/2020	October 13, 2020	Draft rules in respect of prescribing time limit for notifying income tax return forms.
1183(I)/2020	November 06, 2020	Amendment in Alternate Dispute Resolution under section 134A of the Ordinance.
1184(I)/2020	November 06, 2020	Final rules for agreed assessment under section 122D of the Ordinance.
1185(I)/2020	November 06, 2020	Final rules in respect of prescribing time limit for notifying income tax return forms.
1183(1)/2020	November 06, 2020	Amendment in Alternate Dispute Resolution under section 134A of the Ordinance.
1240(1)/2020	November 11, 2020	Amendments in Twelfth Schedule to the Ordinance.
1239(1)/2020	November 20, 2020	Draft Chapter XVIB in the Rule regarding refund rules.
1241(1)/2020	November 20, 2020	Amendment in Clause (12B) Part IV of the Second Schedule of the Ordinance.
1250(1)/2020	November 23, 2020	Insertion of sub rule (2A) in Rule 74 of the Rules.
1249(1)/2020	November 23, 2020	Amendment in Alternate Dispute Resolution under section 134A of the Ordinance.
885(1)/2020	November 24, 2020	Corrigendum in SRO 885 dated September 17, 2020.
1185(1)/2020	November 24, 2020	Corrigendum in SRO 1185 dated 06 November 2020.
1262(1)/2020	November 26, 2020	Amendment in chapter-XII for rule 76 to 760 of the Rules.
1261(1)/2020	November 26, 2020	Draft simplified income tax return for manufactures having turnover less than Rs. 50 million.
1314(1)/2020	December 09, 2020	Chapter XVIB in the Rules regarding refund rules.
1315(1)/2020	December 09, 2020	Amendment in chapter-XII for rule 76 to 760 of the Rules.
1316(1)/2020	December 09, 2020	Draft simplified income tax return for manufactures having turnover less than Rs. 500 million.
1319(1)/2020	December 10, 2020	DNFBPs (Regulatory powers and functions) regulations, 2020.
1318(1)/2020	December 10, 2020	Amendment in jurisdiction order.
1341(1)/2020	December 16, 2020	Draft amendment in the rules regarding Taxpayer's profile.
1368(1)/2020	December 22, 2020	Draft Asset Declaration rules 2020.

# Indirect Tax CIRCULARS AND SROs

## Indirect Tax Circulars

CIRCULAR REFERENCE	DATE	DESCRIPTION
Sales Tax Circular 04 of 2020	December 30, 2020	SOP for registration of new manufacturers for concessionary tariff rates on supply of electricity and gas.
Circular No 03 of 2020 - Operations (Sales Tax)	July 12, 2020	Standard procedure for sanctioning of missing amounts stuck in FASTER system due to system glitches.
	September 30, 2020	Creation of post refund analysis cell at the FBR (HQs) Islamabad.
Sales Tax Circular no.2 of 2020/IR-Operations	September 21, 2020	Standard operating procedure for disposal of cases of condonation of time limit under section 74 of the Sales Tax Act 1990.
	August 06, 2020	Finance Act, 2020 - Explanation of important amendments in Sales Tax Act, 1990 and Federal Excise Act, 2005.

## Indirect Tax SROs

SRO REFERENCE	Dated	SUBJECT
649(I)/2020	August 3, 2020	To exempt the import of oxygen gas, cylinders (for oxygen gas), cryogenic tanks (for oxygen gas) from the whole of the sales tax for a period of three months starting from the 23rd of June, 2020.
751(I)/2020	August 20, 2020	Exemption of taxes from import of refined white sugar.
770(I)/2020	August 24, 2020	Reduced rate of sales tax on import of sugar.
777(I)/2020	August 25, 2020	Greenfield Industrial Undertaking' approval and exemption rules.
776(I)/2020	August 25, 2020	Amendment in rules 2, 5, 14 and 18 of the Sales Tax Rules, 2006 (ST Rules).
770(I)/2020	August 25, 2020	Corrigendum in SRO 770 dated 24 August 2020.
793(I)/2020	August 28, 2020	Amendment in Rules 64, 65, 66 and 68 of the ST Rules relating to Alternate Dispute Resolution.
831(I)/2020	September 09, 2020	Amendments in Rule 150 ZG (Chapter XIV-B) of the ST Rules.
888(I)/2020	September 21, 2020	Amendments in ST Rules to insert chapter VIAB for Real Time Electronic Access for Audit and Survey.
889(I)/2020	September 21, 2020	Video Analytics rules for electronic monitoring.
929(I)/2020	September 21, 2020	Exemption of whole of sales tax on import of 83 X Micron Sprayers for Anti-Locust operation.

931(I)/2020	September 29, 2020	Amendment in ST Rules to insert Rule 164A for supply of used vehicles.
938(I)/2020	October 1, 2020	Sales Tax (Imposition of Restrictions) on wastages of inputs rules, 2020.
1038(I)/2020	October 12, 2020	Exemption of sales tax on local supply of sugar.
1172(I)/2020	November 4, 2020	Amendment in Chapter V of the ST Rules.
1248(I)/2020	November 23, 2020	Sales Tax Special Procedure for adjustment of subsidy against sales tax on locally manufactured tractors rules, 2020.
1257(I)/2020	November 25, 2020	Exemption from sales tax on medical and testing equipment regarding Covid-19.
1339(I)/2020	December 16, 2020	Amendment in Chapter XIV-AB of the ST Rules for cash back to Customers.
1337(I)/2020	December 16, 2020	Exclusion of fertilizer manufacturers from the preview of section 73(4) of the Sales Tax Act, 1990
1338(I)/2020	December 16, 2020	Amendment in ST Rules to insert chapter VIB relating to procedures for E-Audit
1339(I)/2020	December 21, 2020	Corrigendum in SRO 1339 dated 16 December 2020.

### Indirect Tax Circulars - SRB

CIRCULAR REFERENCE	Dated	SUBJECT
Circular No. 06/2020	July 10, 2020	Input tax credit against invoices issued by foreign service providers not having SNTNs.
Circular No. 07/2020	July 24, 2020	Online submission of the option/election forms "F", "C", "R", "B", "G" and "I", prescribed under rules 36, 42B, 42BB, 42C, 42CC and 42G, respectively, of the Sindh Sales Tax on Services Rules, 2011.

### Indirect Tax Notifications - SRB

Notification Order No.	Dated	SUBJECT
SRB-3-4/20/2020	July 03, 2020	Notification of appointing Mr. Raheel Anwar Soomro, Senior Auditor, SRB, to be the Assistant Commissioner, SRB.
SRB-3-4/21/2020	July 03, 2020	Notification regarding certain Deputy Commissioners to exercise the powers of Commissioners SRB or Commissioner (Appeals), SRB.
SRB-3-4/22/2020	July 03, 2020	Notification regarding jurisdictions and functions of the Commissionerate in SRB and units of the services sectors under the SRB Commissionerate.
SRB-3-4/23/2020	July 03, 2020	Notification regarding postings of Commissioners of SRB and their jurisdictions.
SRB-3-4/24/2020	July 03, 2020	Notification regarding postings of the Deputy Commissioners/Assistant Commissioners, SRB, and the units of service sectors assigned to them.



SRB-3-4/25/2020	July 28, 2020	Amendments in notification No.SRB-3-4/21/2020 dated 3rd July,2020, regarding certain Deputy Commissioners to exercise the powers of Commissioners SRB or Commissioner (Appeals), SRB.
SRB-3-4/27/2020	September 04, 2020	Transfers and postings in SRB - Amendments in notification No.SRB-3-4/24/2020 dated 03.07.2020.
SRB-3-4/26/2020	September 04, 2020	Notification.
SRB-3-4/28/2020	September 10, 2020	Transfers and postings in SRB -Amendments in notification No.SRB-3-4/24/2020 dated 03.07.2020.
S.JUDL:4-4/2014/(Pt-III)/91	September 17, 2020	Notification.
SRB-3-4/29/2020	September 28, 2020	Amendment in notification No.SRB-3-4/24/2020 dated 3rd July, 2020-Changes in jurisdictions of officers of the SRB in various units.
SRB/Admin (PF-178) 06-10/2011/33747	October 05, 2020	Notification.
SRB-3-4/31/2020	October 15, 2020	Exemption of Sindh sales tax on services received or procured by the USAID or its implementing partners in relation to the such of the Sindh Basic Education Program (SBEP) projects as are funded by the USAID under the PEPA, 2010, subject to the condition that the service providers and the implementing partners are registered with SRB.
SRB-3-4/30/2020	October 15, 2020	Exemption of Sindh sales tax on certain specified services received or procured in relation to such of the Municipal Services Delivery Program-Sindh (MSDP) projects which are funded by USAID under PEPA-2010.
SRB-3-4/32/2020	October 29, 2020	Amendment in the Sindh Sales Tax Special Procedure (Transportation and Carriage Of Petroleum Oils Through Oil Tankers) Rules, 2018.
SRB-3-4/33/2020	November 05, 2020	Amendment in notification No.SRB-3-4/24/2020 dated 3rd July 2020-Changes in jurisdictions of officers of the SRB in various units.
SRB-3-4/34/2020	November 10, 2020	Amendment in notification No.SRB-3-4/23/2020 dated 03.07.2020 regarding transfers and postings of Commissioners, SRB.
SRB-3-4/35/2020	December 03, 2020	Transfers and postings in SRB -Amendments in notification No.SRB-3-4/24/2020 dated 3rd July, 2020.
SRB-3-4/36/2020	December 30, 2020	Amendment in notification No.SRB-3-4/3/2016 dated 26th February 2016.



## CIRCULARS ISSUED BY SECP DURING THE YEAR 2020

Circular No.	Date	Description
	July 07, 2020	Mutual Funds/Collective Investment Schemes/ Investment Advisory Services.
22 of 2020	July 22, 2020	Relaxation to lending NBFC under regulation 67A of the NBFC and Notified Entities Regulation, 2008.
23 of 2020	July 24, 2020	Approved list of auditors pursuant to section 48(1) of the Insurance Ordinance, 2000.
24 of 2020	August 27, 2020	Extension in filling of Annual AML/CFT Risk Assessment.
25 of 2020	August 31, 2020	COVID-19 related contingency planning for general meetings of shareholders.
26 of 2020	August 31, 2020	Disclosure of impact of COVID-19 on financial statements of companies.
27 of 2020	September 07, 2020	Awareness among policyholders about availability of forums for resolutions of their grievances.
28 of 2020	September 10, 2020	Relaxation to lending Modarabas under regulation 5 of Prudential Regulation of Modarabas.
29 of 2020	September 30, 2020	Clarification regarding section 159 of Companies Act 2017.
30 of 2020	September 30, 2020	Amendments in the Prudential Regulation of Modarabas.
04 of 2004	October 21, 2020	Prudential regulations for Modarabas.
32 of 2020	October 22, 2020	Suitability and risk categorization off CISs.
31 of 2020	October 22, 2020	Categorization of Open-End Collective Investment Schemes.
33 of 2020	November 05, 2020	COVID-19 related contingency planning for general meetings of shareholders.
34 of 2020	December 14, 2020	Amendments in Prudential regulation for Modarabas.
35 of 2020	December 31, 2020	Criteria for opening of digital account for Pakistani individual customers by AMCs.

**Note:** 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
<b>2020 PTD 1583</b>  (Inland Revenue Appellate Tribunal)  Decided on May 06, 2019	100(C) & 2(36) of the Income Tax Ordinance, 2001 [2001 Ordinance]	<p>As per section 100(C): Non-profit organizations, trusts or welfare institutions, as mentioned in sub-section (2) shall be allowed a tax credit equal to one hundred per cent of the tax payable, including minimum tax and final taxes payable under any of the provisions of this Ordinance, subject to certain conditions.</p> <p>In this case, the department disallowed the claim of tax credit on the ground that clause 92 &amp; 58A of Part 1 of the second schedule, were omitted and the appellant had failed to fulfill the condition laid down in S.100(C) for 100% tax credit. Appeal filed before the Commissioner Appeals was dismissed, however the appellant claimed the status of non-profit organization and plead that it holds an approval under sec 2(36)(c) which has perpetuity.</p> <p>The court observed that the appellant neither produced an exemption certificate nor any supporting evidence to show that it fulfilled the conditions mentioned in S.100C (1).</p> <p>The court however observed that Officer's action to levy tax on gross receipts is illogical as if the appellant is not eligible for exemption still is treated as a profit-making university for which expenses incurred are allowed against gross receipt. Matter was hence remanded back by the court.</p>
<b>2020 PTD 1614</b>  (Sindh High Court)  A.P Moller Maersk and Others V. Commissioner Inland Revenue and Others.  Decided on May 31, 2019	107 & 7 of the 2001 Ordinance	<p>In this case, the treatment of a shipping entity to claim exemption on Container Detention Charges [CDC], Container Service Charges [CSC] and Terminal Handling Charges [THC] as shipping and air transport income under the Article 8 of the Agreement for Avoidance of Double between Pakistan and Denmark was objected by tax authorities who held that these elements do not meet the definition of profit for availing exemptions under Danish and Belgian Tax treaties with Pakistan as only the income from the activities facilitating the international shipping operations will be considered as profits for the purpose of claiming exemptions under treaty and not the activities in question.</p> <p>The honorable Court held that CDC, CSC and THC are ancillary to operation of ships in international traffic and profits derived thereof also fell within the category of "Profits from operations of ships in international traffic" and entitled to exemption.</p>
<b>2020 PTD 1169</b>  (Lahore High Court - Bahawalpur Bench)  Commissioner Inland Revenue V. Shamim Oil (Pvt.)  Decided on February 11, 2020	153A of the 2001 Ordinance	<p>The erstwhile Section 153A requires the manufacturers to withhold tax @0.5% from distributor, dealers and wholesalers and such provision was applicable from 01.07.2012 However a blanket exemption was introduced by inserting Clause 80 in Part IV of 2nd Sch dated 24.12.2012.</p> <p>The department issued notice for recovery of this tax for the period 01.07.2012 till 23.12.2012 on the ground that the exemption has no retrospective application.</p> <p>The court dismissed the departmental reference and that exemption of</p>

		clause 80 was applicable retrospectively i.e. from the date of levy.
<b>2020 PTD 1569</b>  (Inland Revenue Appellate Tribunal)  Decided on March 05, 2020.	165 & 182 of the 2001 Ordinance	<p>The section required a taxpayer deducting tax from a payment, to furnish biannual statement on prescribed form with required particulars as may be prescribed.</p> <p>The taxpayer filed statements for July 2016 to June 2017 by only submitting the amount of tax deducted and not the particular prescribed details. The statement for July 2016 was filed with four months delay. The department levied penalty under serial 14 being the omnibus clause. The appellant assailed the order citing the IRIS issues as the reason and taking the plea that there was no loss of revenue.</p> <p>The court however observed that IRIS issues is no plausible reason as no evidence of taking the matter with helpdesk has been submitted. The court also observed that sufficiently regular pattern of improper filings has been observed. The court observed that means rea is mandatory for levy of penalty. The court further observed that serial (1A) being the specific clause is attracted instead of general serial (14).</p> <p>The matter was remanded back for re-adjudication on the lines of above findings.</p>
<b>2020 PTD 1390</b>  (Supreme Court of Pakistan)  Commissioner Inland Revenue V. Faisal Bank Limited  Decided on March 09, 2020.	23(1)(x) of Income Tax Ordinance, 1979 (1979 Ordinance) & 29 of 2001 Ordinance	<p>The claim of bad debt expense under respective sections of the current and the repealed law has remained a subject of controversy.</p> <p>The taxpayers have argued that to classify a receivable as bad debt and claiming it is there discretion while the authorities have objected this.</p> <p>In the instant case of a bank, the court has held that claim of bad debt cannot be left at the discretion of the taxpayer and that such claim has to be established.</p>
<b>2020 PTD 1559</b>  (Inland Revenue Appellate Tribunal)  Decided on March 18, 2020.	182 of the 2001 Ordinance	<p>As per Section 182, any person who fails to furnish the return within due date is required to pay penalty being prescribed percentage of tax payable. An explanation was inserted vide Finance Act 2011 that tax payable means tax chargeable on the taxable income.</p> <p>In this case, the department levied this penalty on the taxpayer for the Tax years 2008-2011 due to delay in submission of Income Tax Returns i.e. by retrospective application of the above explanation.</p> <p>The Tribunal dismissed the department's appeal holding that this explanation should be applied prospectively and restricted the penalty to the minimum amount as per the table.</p>
<b>2020 PTD 1316</b>  (Islamabad High Court)  Teradata Ireland Limited V. Federation of Pakistan	152 of the 2001 Ordinance	<p>The Section 152 relates to payments to non-resident persons. It requires every person to deduct tax from gross amount paid to a non-resident person for their services. Exemption from withholding of tax on outward remittance can though be filed by the payer.</p> <p>In this case Tera Data Pakistan [TD- PK] filed an exemption under Section 152(5) from deducting tax while making payment to Tera Data Ireland [TD-IRL] taking plea that TD-PK is not a Permanent Establishment [PE] of TD-IRL and hence business income of TD-IRL is</p>

Decided on June 02, 2020.		<p>exempt from Pakistan tax. The tax authorities also issued notices to TD-IRL to obtain tax registration and file return under the PK revenue laws.</p> <p>The tax authorities however rejected this exemption claim and holding that on the basis of provision of agreement it is deduced that TD-PK is PE of TD-IRL. The CIR-A and Tribunal upheld the action of tax authorities.</p> <p>The Court held that prerequisite for issuing Writ of Certiorari are missing and declined to interfere on the concurrent findings.</p> <p>The court however set-aside the notice demanding filing of return by TD IRL noting that the said notice was issued without any opportunity of hearing and in violation of natural justice.</p>
<b>2020 PTCL (CL) 696</b>  (High Court of Sindh)  M/s. Yaqoob Ahmed v. Federation of Pakistan and others  Decided on July 02, 2020	Income Support Levy Act, 2013	<p>Petitions were filed before the Hon'ble High Court of Sindh challenging the imposition of income support levy at the rate of 0.5% on the value of Net Movable Assets through Income Support Levy Act, 2013 for being ultra-vires the Constitution of Islamic Republic of Pakistan, 1973. The said levy was declared to be ultra-vires to the Constitution for the reason that since the levy does not possess the characteristics of a 'tax' and rather is in the nature of a 'fund', to be charged and utilized for a specific purpose, therefore, it could not be introduced through Finance Act, 2013, in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973. The Hon'ble Court further declared the levy to be ultra vires the Constitution for being discriminatory as it purportedly created unreasonable classification within the same class of persons. Moreover, all notices, proceedings and assessment orders passed after repeal of the Income Support Levy Act, 2013 were declared to be without jurisdiction and lawful authority, in the absence of any saving or validation clause.</p>
<b>2020 PTD 1742</b>  (High Court of Sindh)  M/s. HBL Stock Fund v. Pakistan & Others  Decided on July 21, 2020	Section 4B of the 2001 Ordinance	<p>Petitions were filed before the Hon'ble High Court of Sindh challenging the imposition of super tax under section 4B for being ultra-vires the Constitution of Islamic Republic of Pakistan, 1973. The said levy was declared to be intra-vires the Constitution for the reason that the imposition of Super Tax under section 4B was rightly introduced under Article 73 of the Constitution because it possesses the characteristics of a 'tax' and is not a 'fee' (as there is no element of quid pro quo). Furthermore, the Hon'ble Court held that the Super Tax imposed under section 4B does not amount to double taxation as it is an additional tax on income covered under Entry 47 of the IV Schedule to the Constitution "taxes on income". Moreover, it was held that the imposition of super tax is not violative of Article 25 of the Constitution, since it is neither discriminatory nor creates any unreasonable classification amongst the same class of person.</p>
<b>2020 PTD 1646</b>  (Islamabad High Court)  Messrs. Technimont SPA V. Federation of Pakistan  Decided on July 30, 2020	Section 152 of the 2001 Ordinance, 48(1)(a) of the Sales Tax Act, 1990	<p>The brief of the related controversy is</p> <ul style="list-style-type: none"> <li>▪ M/s Habib Coastal Power Company [HCPC] had an EPC contract with Messrs Technimont SpA [contractor].</li> <li>▪ HCPC made payment to contractor outside Pakistan pursuant to the EPC contract and deducted tax therefrom at PKR 217,061,749 pursuant to the notice issued by FBR</li> <li>▪ The contractor impugned the action and matter was decided by the Tribunal in its favour vide order dated 29.09.2010. The High Court also decided the matter in favour of contractor in the petition filed by</li> </ul>

		<p>FBR.</p> <ul style="list-style-type: none"> <li>▪ The refund was not sanctioned, and the contractor approached the forum of FTO who vide order dated 04.10.2013 directed the tax authorities to refund the said amount to the contractor.</li> <li>▪ The tax department however adjusted this refund amount against sales tax liability arising against the HCPC in the sales tax.</li> </ul> <p>This was again challenged by the contractor and hence the instant petition.</p> <p>The court has ordered in favor of the contractor holding that the tax authorities should refund the amount to the contractor as the deduction of tax from payment made to non-resident and its deposit in Treasury was not in discharge of HCPC's own liability and could not be adjusted against his independent sales tax liability.</p>
<p><b>2020 PLD 641</b></p> <p>(Supreme Court of Pakistan)</p> <p>M/s. Khurshid Soap &amp; Chemical Industries (Pvt.) Ltd v. Federation of Pakistan and others</p> <p>Decided on August 13, 2020</p>	GIDC Act, 2015	<p>The Apex Court (by way of a majority judgment) held that the imposition of Cess under the GIDC Act, 2015 is 'purpose based' and carries an element of quid pro quo, making it a fee-imposing enactment and not a tax-imposing enactment. Therefore, it was validly enacted through a bill moved in the Parliament under Article 70 of the Constitution deriving its legislative competence from Entry 54 read with the enabling Entry 27 of Part I of the Federal Legislative List contained in the First Schedule to the Constitution.</p> <p>On the basis of such findings, it was held that the GIDC Act, 2015, in effect, cured the defects which lead to the invalidation of the GIDC Act, 2011 in Durrani Ceramics case reported in 2014 SCMR 1630 and therefore, it is in accordance with the provisions of the Constitution.</p>

## SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
<p><b>2020 122 Tax 467</b></p> <p>(Supreme Court of Pakistan)</p> <p>Sindh Revenue Board V. The Civil Aviation Authority of Pakistan</p> <p>Decided on May 29, 2017</p>	<p>Section 2(5)(6)(7)(79) and 3 of the Sindh Sales Tax on Services Act, 2011</p>	<p>This is another landmark verdict by the Honourable Supreme Court of Pakistan regarding constitutional competence of provincial legislature to tax services provided by the regulatory authorities set up by the Federal Government.</p> <p>Background of the case is that the Civil Aviation Authority of Pakistan (CAA) had filed writ petition under Article 199 of Islamic Republic of Pakistan challenging the imposition of sales tax on services levied upon it under the Sindh Sales Tax on Services Act, 2011 which was allowed by the Honourable Sindh High Court against which Sindh Revenue Board filed appeal before the Honourable Supreme Court.</p> <p>While disposing of appeal filed by the Sindh Revenue Board, the Honourable Supreme Court held that CAA is a regulatory authority which performs functions which are within the exclusive domain of the Federal Legislature. The Federation exercises executive authority in respect of subjects which can be legislated by the Federal Legislature and the Federal Government's executive authority can be conferred upon "the authorities subordinate to the Federal Government". The Federal Legislature enacted the Pakistan Civil Aviation Authority Ordinance, 1982. CAA is controlled by the Board which is appointed by the Federal Government and CAA is bound by the directives of the Federal Government. Taxing the CAA would amount to tax the operations of the Federal Government. The province cannot act upon such institutions because they are created by the representatives of the entire Federation that is of all the units of the Federation and the peoples residing therein. The people of a particular unit of Federation, in this case the people of Sindh, cannot prevail over the will of whole over whom they can neither claim nor exercise control.</p> <p>Accordingly, the judgment of Honourable Sindh High Court has been upheld to the extent that CAA is not liable to pay the tax under the Sindh Sales Tax on Services Act, 2011</p>
<p><b>2020 PTD 2087</b></p> <p>(Appellate Tribunal-SRB)</p> <p>Decided on, August 16, 2018</p>	<p>Section 23, 47 of the Sindh Sales Tax on Services Act, 2011</p>	<p>Vide this judgment the learned Appellate Tribunal Sindh Revenue Board has held that in case the tax is payable in Sindh and the same has been deposited with FBR or some other authority, it could not absolve the registered person from its liability to pay Sindh Sales Tax.</p>
<p><b>2020 PTD 1790</b></p> <p>(Supreme Court of Pakistan)</p> <p>The Commissioner IR Zone-III, RTO-II Lahore V. Messrs.</p>	<p>Section 11, 30 &amp; 31 of Sales Tax Act, 1990</p>	<p>Vide this judgment, the Honourable Supreme Court of Pakistan has set aside the judgment of single Bench of Lahore High Court in case of M/s Hamza Nasir Wire &amp; others regarding issue of delegation of powers by the Commissioner to sub-ordinates for issuance of show cause notice under Section 11 of the Sales Tax Act, 1990.</p> <p>It has been held that there is no need of any delegation of power for issuance of show cause notice in relation to assessment and recovery of tax by the FBR. Rather, such power is conferred upon the OIRs by</p>



Hamza Nasir Wire and others  Heard on November 20, 2018		Section 11 of the Sales Tax Act, 1990, exercise of such powers by the OIRs forms part of their functions under the Sales Tax Act, 1990.  Accordingly, the opinion of High Court that jurisdiction notification issued by the FBR is the only source of vesting of powers in OIRs is incorrect as it overlooks the effect of Section 31 of the Sales Tax Act, 1990 and proper meaning of term "functions" used in Section 30(2A) to (3) of the Sales Tax Act, 1990.
<b>2020 122 Tax 510</b>  (Islamabad High Court)  Director I & I (Inland Revenue), Islamabad etc. V. Naeem Siddique  Decided on, December 11, 2018	Section 2(37) of the Sales Tax Act, 1990	Vide this judgment the Honourable Islamabad High Court has laid down the principle that when the original liability is yet to be determined by the adjudicating officer against the registered person/accused, it could not be presumed that a tax fraud with reference to Section 2(37) of the Sales Tax Act, 1990 was committed. Therefore, no criminal proceedings can be initiated against the registered person before determination of tax evaded.
<b>2020 PTD 1502</b>  (Inland Revenue Appellate Tribunal)  Decided on December 14, 2018	Section 2(16) & 2(17) of the Sales Tax Act, 1990	Through this judgment dispute that whether activity of importing finished cloth in big rolls and cutting it into smaller roles before selling it to customers can be termed as "manufacturing" in terms of Section 2(16)(c) of the Sales Tax Act, 1990 has been decided.  While dilating upon the issue, the learned Inland Revenue Tribunal observed that definition under Section 2(16) of the Sales Tax Act, 1990 comprises of three clauses which are interconnected, and it is compact definition of "manufacture" or "produce". The clause (b) and (c) of aforesaid Section are to be read in continuation of clause (a). Thus, it was held that manufacturing means a process whereby an article singly or in combination of other articles converts into another distinct article. Accordingly, it was decided that the activity of cutting big rolls of finished cloth into smaller roles was not manufacturing as no distinct article was being produced as result of such activity.
<b>2020 PTD 1279</b>  (Inland Revenue Appellate Tribunal)  Decided on April 4, 2019	Section 3, 4 & 49(2) of the Sales Tax Act, 1990	Crux of the issue decided in this case is that tax demand was raised by department on account of fixed assets transferred to associated undertaking treating the same as "sale"; as opposed to the view taken by the registered person that such transfer represented "partial transfer of taxable activity".  While disposing of the case, the learned Inland Revenue Appellate Tribunal held that since both the persons were registered, therefore, sales tax invoice with zero rate of tax was required to be issued in the light of Section 49(2) of the Sales Tax Act, 1990. Therefore, it was mere a procedural lapse and transaction did not have any revenue implication. Accordingly, tax demand was deleted.
<b>2020 PTD 1809</b>  (Appellate Tribunal-SRB)  Decided on,	Section 55 of the Sindh Sales Tax on Services Act, 2011	Through this judgment the learned Appellate Tribunal Sindh Revenue Board has held that powers regarding revision of assessment as conferred upon the Commissioner under Section 55 of the Sindh Sales Tax on Services Act, 2011 are quasi-judicial in nature. Therefore, any revision application filed with the Commissioner under aforesaid section can only be disposed of by passing a speaking order after affording proper



May 16, 2019		opportunity of being to the parties. The rejection letter issued by the staff of Commissioner's office was held to be illegal.
<b>2020 PTD 2095</b> (Lahore High Court)  D. Watson Chemist V. Federation of Pakistan and others  Heard on, September 8, 2020	Section 2(43A), 23 of the Sale Tax Act, 1990	The Honourable High Court of Lahore has dismissed the intra court appeal whereby the vires of law requiring the online integration for real time reporting of sales by the Tier-1 retailers were challenged on the ground that such requirement is in violation of Articles 4, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 being discriminatory. The judgment of learned single judge has been maintained whereby the provisions requiring online integration has been held to be intra vires.