

E-News & Views

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A Publication of KTBA October 2021 to December 2021

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,

Today, as I write this message, I am delighted to inform you that by the time this 4th edition covering information upto December 2021 would reach you, our tenure would have end by Grace of Almighty Allah.

This is the resolute effort of Ms. Raeel Fatima and her team who have worked tirelessly throughout the year with a lot of passion and zeal.

As always this edition covers circulars and notifications issued by Federal and Provincial Law Authorities including notifications and circulars by Securities & Exchange Commission of Pakistan. Additionally, as always we our team has also included important case laws dealing with Sales-tax, Federal Excise and Income Tax.

Lastly, I would also like to inform you that Ms. Fatima and her team has also made a brilliant effort to sort case laws of both direct and indirect taxes (index-wise and section-wise) covering the period from 2014 onwards. I am sure that this publication would not only give a bird's eye view but would also serve as a catalyst for the members!

I and my team would always be available and would welcome your suggestions.

God bless you!

Yours in service,

Muhammad Zeeshan Merchant

FROM THE DESK OF THE CONVENER



Dear Fellow Members,

I feel pleasure to deliver my annotations through this publication, on behalf of news & views committee of the Bar. I am very grateful to the members of the Bar for given me this opportunity to serve this Bar.

I am glad that I have such a good team. I appreciate this Sub-Committee to complete the publication of 4th Quarter of this Calendar Year 2021.

We have compiled in this issue, Circulars, SROs and General Orders concerning revenue laws of the Country issued from October, 2021 till December, 2021.

This publication also covers circulars and notifications issued by Sindh Revenue Board, Punjab Revenue Authority, Baluchistan Revenue Authority, Khyber Pakhtunkhuwa Authority & Securities & Exchange Commission of Pakistan. In addition to aforesaid, the important PTD case laws dealing with Sales-tax, Federal Excise and Direct Tax which are great assets to our profession are also the part of this publication.

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

Yours in service,

Raeel Fatima

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
09 of 2021-22	October 31, 2021	Extension in Deadline Stipulated under Section 21(la) of the Income Tax Ordinance, 2001
10 of 2021-22	November 30, 2021	Extension in deadline stipulated under section 21(la) of the Income Tax Ordinance, 2001

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
1407(I)/2021	October 29, 2021	Exemptions on import of drones donated by Ministry of Agriculture and Rural Affairs (MARA), China to Pakistan through Sea Route
1458(I)/2021	November 11, 2021	Tax exemption in respect of International Sukuk Issuance under the Government of Pakistan Trust Certificate Issuance Program
1457(I)/2021	November 11, 2021	Tax exemption in respect of International Sukuk Issuance under the Government of Pakistan Trust Certificate Issuance Program
1551(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Karachi
1561(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Multan
1540(I)/2021	December 01, 2021	Value of Immovable Properties of DG Khan
1546(I)/2021	December 01, 2021	Valuation of Immovable Properties of Hafizabad
1547(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Hyderabad
1548(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Islamabad
1549(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Jhang
1550(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Jhelum
1545(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Gwadar
1552(I)/2021	December 01, 2021	Valuation of Immovable Properties of Kasur
1553(I)/2021	December 01, 2021	Valuation of Immovable Properties of Khushab

1554(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Lahore
1555(I)/2021	December 01, 2021	Valuation of Immovable Properties of Larkana
1544(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Gujrat
1556(I)/2021	December 01, 2021	Valuation of Immovable Properties of Lasbela
1543(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Gujranwala
1557(I)/2021	December 01, 2021	Valuation of Immovable Properties of Mandi Bahauddin
1558(I)/2021	December 01, 2021	Valuation of Immovable Properties of Mansehra
1559(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Mardan
1542(I)/2021	December 01, 2021	Value of Immovable Properties of Ghotki
1560(I)/2021	December 01, 2021	Valuation of Immovable Properties of Mirpurkhas
1562(I)/2021	December 01, 2021	Valuation of Immovable Properties of Nankana
1563(I)/2021	December 01, 2021	Valuation of Immovable Properties of Narowal
1564(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Peshawar
1565(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Quetta
1566(I)/2021	December 01, 2021	Valuation of Immovable Properties of Rahimyar Khan
1567(I)/2021	December 01, 2021	Evaluation of Immovable Properties of Rawalpindi
1541(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Faisalabad
1568(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Sahiwal
1569(I)/2021	December 01, 2021	Valuation of Immovable Properties of Sheikhpura
1570(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Sialkot
1571(I)/2021	December 01, 2021	Revaluation of Immovable Properties of Sukkur
1539(I)/2021	December 01, 2021	Value of Immovable Properties of Dera Ismail Khan
1572(I)/2021	December 01, 2021	Valuation of Immovable Properties of Toba Tek Singh
1538(I)/2021	December 01, 2021	Value of Immovable Properties of Chakwal

1537(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Bahawalpur
1536(I)/2021	December 01, 2021	Value of Immovable Properties of Bahawalnagar
1535(I)/2021	December 01, 2021	Value of Immovable Properties of Attock
1534(I)/2021	December 01, 2021	Revision of Value of Immovable Properties of Abbottabad
1608(I)/2021	December 17, 2021	Draft Amendment in Rule 78 of the Income Tax Rules, 2002

Indirect Tax CIRCULARS AND SROs

Indirect Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
04 of 2022	December 13, 2021	Recovation of the condition of Installed Capacity Determination Certificate (ICDC) from the Khyber Pakhtunkhwa Department of Industries or the Ministry of Industries, Government of Pakistan and certain timelines to be adhered to

Indirect Tax SROs

SRO REFERENCE	DATE	DESCRIPTION
1327(I)/2021	October 07, 2021	Change in Rate of Sales Tax on Petroleum Products
1450(I)/2021	November 11, 2021	Change in Rate of Sales Tax on Petroleum Products
1465(I)/2021	November 15, 2021	Amendment in Notification No. S.R.O 985(I)/2021 dated 04 th August, 2021
1464(I)/2021	November 15, 2021	Amendment in Notification No. S.R.O 690(I)/2019 dated 29.06.2019
1501(I)/2021	November 22, 2021	Exemption form whole of sales tax on import of edible fruits from Afghanistan except Apples
1515(I)/2021	November 26, 2021	Inland Revenue Uniform Rules, 2021
1579(I)/2021	December 07, 2021	Change in rate of Sales Tax on Petroleum Products
1604(I)/2021	December 16, 2021	Change in Rate of Sales Tax on Petroleum Products

Indirect Tax Circulars – SRB

Judgment No.	Date	Subject
C.P. NOD-4778 to 4780 2021	October 08, 2021	Sindh High Court's Judgement Dated 08-10-2021 in C.P. NOD-4778 to 4780 2021 Filed by Telecommunication Companies vs Federation of Pakistan & others
C.P. NO D-310 2019	December 29, 2021	Sindh high court's judgement dated 29-12-2021 in c.p. no d-310 2019 filed by al-tariq construction (private) limited vs sindh revenue board

Indirect Tax Notifications – SRB

Notification Order No.	Dated	Subject
SRB-3-4/32/2021	October 14, 2021	Amendments in Notification No. srb-3-4/23/2021 dated 13th July, 2021 - Jurisdiction of the Assistant Commissioners, SRB
No.SOII(SGA&CD)3-27/2021	November 23, 2021	Notification
No.SRB/Admin/(PF-50)8-8/2021	December 16, 2021	Notification
No.SRB-3-4/33/2021	December 17, 2021	Amendment in the Sindh Sales Tax on Services Rules, 2011 ----- Substitution of Annex - D of Tax Return Form SST-03.
No.SRB-3-4/35/2021	December 20, 2021	Amendment in notification No. SRB-3-4/23/2021 dated 13th July, 2021 - Jurisdiction of the Assistant Commissioners, SRB
No.SRB-3-4/34/2021	December 20, 2021	Amendments in Notification No. SRB-3-4/22/2021 dated 13th July, 2021 ----- Transfers and Posting of Commissioners, SRB
No.SRB/Admin/Charge Relinquish/2021/60168	December 30, 2021	Notification
No.SRB-3-4/36/2021	December 30, 2021	Amendment in notification No. SRB-3-4/23/2021 dated 13th July, 2021 - Jurisdiction of the Assistant Commissioners, SRB

Indirect Tax Notifications – KPRA

Notification Order No.	Dated	Description
KPRA/OPT TO STANDARD RATE/2020/815	December 15, 2021	Permission to Operate Under Standard Rate of Tax (15%) in Term of Section 26-A of the KP Finance Act, 2013.(M/s Area - Banu Mukhtar Joint Venture)
KPRA/OPT TO STANDARD RATE/2020/816	December 15, 2021	Permission to Operate under Standard Rate of Tax (15%) in Term of Section 26-A of The KP Finance Act, 2013.(M/s ORA HRL Joint Venture)

Indirect Tax Notifications – PRA

CIRCULAR NO.	Dated	Description
01 of 2021	December 08, 2021	RIT (Right to Information) for Transparency, Good Governance & Elimination of Corruption

CIRCULARS ISSUED BY SECP

Circular No.	Date	Description
Circular No. 26 of 2021	October 11, 2021	Regulatory Framework for Account Opening by AMC's
Circular No. 27 of 2021	October 13, 2021	Mandatory Certification for the Professional of the Capital Market
Circular No. 23 of 2021	October 29, 2021	Relaxation Allowed for Participation in Kamyab Pakistan Program to Non-Bank Microfinance Companies under Regulation 67A of Non - Banking Finance Companies & Notified Entities Regulation, 2008
Circular No. 29 of 2021	October 29, 2021	Disclaimer on Use of Name & Logo of Bank or Sponsor by Asset Management Companies (ACM's)
Circular No. 28 of 2021	October 29, 2021	Criteria for Investing in Equity Securities by Collective Investments Schemes (CIS)
Circular No. 31 of 2021	November 12, 2021	Statement of Performance Information on Annual Basis (Insurance Sector)
Circular No. 31 of 2021	November 12, 2021	Annexures - Insurances Industry Information Format
Circular No. 30 of 2021	November 18, 2021	Master Circular for Mutual Funds (MF), Collective Investments Schemes (CIS), Investment Advisory Services (IAS), (Updates November 03, 2021)
Circular No. 32 of 2021	December 14, 2021	Regulatory Framework for Account Opening by AMC's

Notifications Issued By SECP

Notification No	Date	Subjects
S.R.O 1302(I)/2021	October 06, 2021	Amendments to the Companies (Distribution of Dividends) Regulations, 2017
S.R.O 1325(I)/2021	October 06, 2021	Draft Amendments In The Association With Charitable & Not for Profit Objects Regulations, 2018
S.R.O 1330(I)/2021	October 13, 2021	Registration of 5th Pillar Family Takaful Limited to Carry on Life Insurance Business
S.R.O 1396(I)/2021	October 28, 2021	Amendments in the Non-banking Finance Companies & Notified Entities Regulations (NBFC & NE) Regulations, 2018
S.R.O 1417(I)/2021	November 08, 2021	Amendments to the Central Depositories (Licensing & Operations) Regulations, 2016
S.R.O 1461(I)/2021	November 15, 2021	Amendments in the Companies (Further Issue of Shares) Regulations, 2020.
S.R.O 1493(I)/2021	November 23, 2021	Draft Amendments to the Companies (Incorporation) Regulations, 2017
S.R.O 1512(I)/2021	November 26, 2021	Draft Amendments to the Companies (Registration Office) Regulations, 2018
S.R.O 1574(I)/2021	December 06, 2021	Amendments in the Association with Charitable & Not for Profit Objects Regulations, 2018
S.R.O. 1395(I)/2021	December 14, 2021	Amendments in Public Offering Regulated Securities Activity Licensing Regulations, 2017
S.R.O 1605(I)/2021	December 21, 2021	Notifications for Amendments to NBFC & NE Regulations, 2018 - NBMFCS & Housing Standards
S.R.O 1581(I)/2021	December 22, 2021	Permission to RDA Eligible Bank to Distribute Units of CIS VPS of Multiple AMCs.

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
PTCL 2021 CL. 714 (Supreme Court of Pakistan) MCB BANK V/S Commissioner Inland Revenue Decided on January 13, 2021	Section 161 of the Income Tax Ordinance, 2001	In this case the Honorable Supreme Court of Pakistan held that the Tax authorities are misusing the case of <i>Bilz (Pvt) Ltd. V. Deputy Commissioner of Income Tax and another</i> reported in 2001 PTD 2337 and observed that the tax authorities could not launch fishing expeditions and roving inquiries on the basis of the said judgment. The court further observed that the said judgment does not support or allow the issuance of show cause notices of deliberate vagueness and generality. The Honorable court held that reliance on the said judgment does not shift the burden under section 161 of the Income Tax Ordinance, 2001 on to the taxpayer by simply identifying one or more payments or a class or category of payments. The Honorable court further held that proceedings under section 161 become operative only if there is failure to collect or deduct tax. Their lordships went on to observe that it is a gross misreading of the said section to conclude that for the section to apply, all that the Commissioner has to do is point out payments. It was held that there must be some reason or information available with the Commissioner for him to conclude that there has been a failure to deduct tax satisfying the test of objectiveness.
PTCL 2021 CL. 679 (Supreme Court of Pakistan) The Commissioner Inland Revenue Zone IV, Corporate Regional Tax Office, Karachi V/S M/s MSC Switzerland Geneva and other Decided on April 12, 2021	Section 107 of the Income Tax Ordinance, 2001	In this case the question for determination was whether taxpayers who are otherwise qualified and fall within the domain of double taxation treaties between Pakistan and foreign countries, are entitled to the benefit of the respective treaties in so far as the levy of super tax is concerned. The Honorable High court held that the levy of super tax is identical/ substantially similar to the levies existing at the time the taxpayers entered into the double taxation treaties. The Honorable High Court therefore held that the taxpayers who are qualified and fall within double taxation treaties between Pakistan and respective foreign countries are either exempt or liable to pay super tax at reduced rates in terms of their respective treaties.
2021 PTD 1827 (Islamabad High Court) Commissioner Inland Revenue, Legal zone, Large taxpayers office V/S Messrs Wateen Telecom Limited and others	Sections 133 & 122 of the Income Tax Ordinance, 2001	In this case, the Hon'ble Court has held that the jurisdiction of High Court under section 133 of the Income Tax Ordinance, 2001 is appellate in nature. The Hon'ble Court observed that the High Courts could not alter the findings of facts decided by the Tribunal, even if the High Court disagrees with the findings of the Tribunal. Their lordships also held that, as is clear from section 122(2)(a) of the Income Tax Ordinance, 2001, an

Decided on July 12, 2021		assessment may only be amended within five years from the end of the financial year. Further, once the prescribed time of five years has lapsed, the Tax Department will be barred to amend or alter the assessment under section 122 of the Income Tax Ordinance, 2001. Moreover the Hon'ble Court observed that the Commissioner (Appeals) has no power or jurisdiction to extend the specified period of limitation as provided under section 122(2) of the Income Tax Ordinance, 2001.
PTCL 2021 CL.804 (Sindh High Court) Civil Aviation Authority V/s Appellate Tribunal Inland and Another Decided on September 07, 2021	Section 236A of the Income Tax Ordinance, 2001	The question before the court was that whether the appellant was required to collect withholding tax under section 236A of the Income Tax Ordinance, 2001 and whether explanation inserted in section 236A by Finance Act, 2020 was effective retrospectively. The appellant in this case is a statutory authority, which derives income from service activities, which are incidental to air transportation and maintenance of infrastructure for air transport services including airports throughout Pakistan. The explanation inserted by Finance Act, 2020 stated that the expression of sale of public auction or auction by tender include renewal of license previously sold by public auction or auction by a tender and where payment is received in installments, advance tax is to be collected with each installment. The Hon'ble High court held that the explanation inserted in section 236A is of a clarificatory in nature, which operates retrospectively as it only provides assistance in interpreting the provisions correctly in terms of the intention of the legislature. The Honorable Court therefore, held that the applicant who is a collecting agent was required to collect advance tax under section 236A and that the explanation to the said section caters for retrospective effect as it is only clarificatory in nature.

SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
2021 PTD 1813 (Sindh High Court) Saleem Ahmed & Others Vs Federation of Pakistan Decided on September 12, 2019	Section 11 & 21 of the Sales Tax Act 1990.	<p>The petitions have been filed against suspension and blacklisting of sales tax registration.</p> <p>The Court in deciding the petitions held the following:</p> <ol style="list-style-type: none"> 1. Rule 12 would only be read to mirror the two grounds provided under Section 21(2) for suspension and/or blacklisting of one's STRN and any other ground taken for such suspension or blacklisting being in excess of the statutory authority mandated under section 21(2) fails to inspire judicial confidence. 2. To be satisfied, the Commissioner ought not to have only one sided indulgence, rather must give full opportunity to the other side for hearing latter's point of view before finds himself convinced beyond a reasonable doubt and exercises power granted under this section. <p>Once the Commissioner comes to the conclusion that either fake invoices have been issued or tax fraud has been committed, fair trial process as enshrined in Article 10-A of the Constitution is to be followed. There is no concept of fair trial without giving an opportunity of hearing.</p>
2021 PTD 2184 (Inland Revenue Punjab Tribunal) Omer Ataullah Khan Vs Commissioner (Appeal) PRA Lahore Decided on December 04, 2019	Section 27, 29, 60 & 63 of the Punjab Sales Tax of Services Act 2012.	<p>The crux of the matter is whether order passed of compulsory registration under Section 27 of the PSTSA 2012 is appealable before the Commissioner.</p> <p>The Tribunal held that section 60 deals with matters related to determination of tax liability, assessment of tax, charging of default surcharge, imposing of penalty and recovery of amount refunded erroneously. Since the order of compulsory registration does not deal with any question relating of tax assessment and does not impose any type of financial liability hence is not appealable.</p>
2021 PTD 1082 (Sindh High Court) Reliance Petrochemical Industries (Pvt) Ltd Vs Federal Board of Revenue	Section 40B of the Sales Tax Act 1990.	<p>The crux of the matter is whether the officer of Inland Revenue can continue to perform function of monitoring of production and sales of taxable goods and the stock position at appellant premises after the omission of proviso to section 40B of the Act.</p> <p>The court held that omission of proviso manifest that legislature intends to take away the power of the</p>

Decided on March 01, 2021		commissioner to deploy officers to appellant premises and it would be absurd to suggest that notwithstanding the omission the officer would continue the monitoring assignment tasked by the commissioner. Hence, after the omission the officer are unable to continue their monitoring exercise.
2021 PTD 2050 (Appellate Tribunal Inland Revenue) Peshawar Electric Supply Company Vs CIR RTO Peshawar Decided on June 25, 2021	Section 2(33), 2(41), 25 & 72B of Sales Tax Act 1990	<p>The facts of the case are that department on the basis of audit conducted by the staff of DGRRA levied sales tax of Rs 612,830,752/- along with default surcharge and penalty.</p> <p>The tribunal held that DRRA is alien to hierarchy of officers authorized under the Act, hence cannot conduct audit of person registered under the Act.</p> <p>It was also held that system of self-assessment can be checked through the tool of audit under Section 25 and 72B of the Act and there is no other mechanism to lift the veil of self-assessment under the Act.</p> <p>Further, PESCO only provided services to TESCO which is not under the domain of Federal Government and has not made any taxable supply of goods.</p>
2021 PTD 2101 (Sindh High Court) Mubbashir Trader Vs Appellate Tribunal SRB Decided on September 10, 2021	Section 24B of the Sindh Sales Tax of Services Act 2011.	<p>Brief facts of the case are Sindh Revenue Board (SRB) disputed certain sale-purchase transactions executed between distributors of FMCGs and respective manufacturers on the pretext that such transactions infact involved element of distribution service and accordingly liable to be taxed under Sindh Sales Tax on Services Act, 2011 (SSTSA).</p> <p>The court held that nature of transaction of sale / purchase of goods between the manufacturer and the distributors established through the distribution agreement aims to propel a service performed by the distributors which fall under the head of "supply chain management / distribution (including delivery) service" and exposed to Sindh Sales Tax under SSTSA on the basis of the following reasons:</p> <ul style="list-style-type: none"> • Even after receiving full and final payment for the goods and surrendering possession of subject goods, the manufacturers retained right to check that the distributors had sufficient resources for re-sale of the goods • In terms of distribution arrangement, the distributors are bound to make endeavors to promote and increase the sale of products and to maintain at all times a reasonably adequate stock of the goods at their place to ensure prompt deliveries to the customers and be vigilant to look for potential customers. <p>Even if it is considered that on full payment of</p>

		consideration by the distributors, the goods become their property and ownership along with risk and reward is transferred to them, the distribution agreement restricts the distributors from exercising full control over the goods since they are bound by further instructions of manufacturers (which do not relate to warranty or after sale service).
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Note: Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.