# SUPREME COURT SUSPENDS SHC'S ORDER ON FBR NOTICES

While granting leave to apeal, Supreme Court of Pakistan has suspended the orders of Sindh High Court (SHC) on the issuance of notices by FBR to Pakistanis regarding their overseas assets, income and expenses. The Apex Court has accepted the plea of FBR for hearing of an appeal. A three-member bench of Supreme Court heard the plea under the Chair of Justice Umar Atta Bandial.

Earlier, Sindh High Court (SHC) had declared FBR's notices null & void and illegal in December, 2020. The lawyer of FBR stated during the hearing that in accordance with Income Tax Ordinance-2001, all the Pakistanis having assets or income abroad were obligated to declare their assets, income and expenses along with their annual returns. To comply with the stated legal provision, FBR had issued the notices to the Pakistanis having foreign source income or assets abroad but had not declared them alongwith the Income Tax Returns.

Therefore, some individuals preferred to appeal before Sindh High Court against issuance of notices by FBR and pleaded before the court to declare the notices as illegal. While accepting the plea of hearing appeal, Supreme Court stated that notices issued by FBR could not be challenged before the High Court as per law settled by the Apex Court.

FBR PR 10-1-2022

# FOREIGN INCOME ASSETS, LIABILITIES: SC SUSPENDS SHC VERDICT

ISLAMABAD: The Supreme Court suspended the judgment of the Sindh High Court (SHC) regarding the declaration of foreign income assets and liabilities of resident taxpayers.

A three-judge bench, headed by Justice Umar Ata Bandial, on Monday, heard an appeal of Commissioner Inland Revenue AEOI, Karachi against the SHC's verdict. Advocate Hafiz Ahsaan Ahmad Khokhar, representing the Federal Board of Revenue (FBR), said that the resident taxpayers have challenged the show-cause notices proceedings issued under new legal amendments in the Income Tax Ordinance, 2001, introduced through Finance Act, 2018, whereby, every resident taxpayer under Section 116A (1), Section 109A of ITO, 2001 was required to separately declare their foreign assets, incurring foreign expenditure, earning foreign income and owning foreign liabilities through separate Foreign Income and Asset Statement, starting from Tax Year 2019. He said the default consequences for failing to comply are mentioned under new Section 182(1) at Serial 1AAA of the Income Tax Ordinance (ITO), 2001.

Hafiz Ahsan argued that the respondents are resident taxpayers and undoubtedly have foreign assets and foreign income, but failed to file their tax returns being resident taxpayers for the tax year 2019 as per Section 116A (1) of the ITO. He maintained that the SHC's impugned judgment held that in the absence of notified format required under Section 116A (2) of the ITO, and whereas, nothing has been concealed nor there is any consequence, either on income or tax liability, of petitioners for non-filing of foreign income and Assets Statement along with the return of income for the tax year 2019, as required under Section 116A1; therefore, the penal provisions under Section 182 (2) of the Ordinance could not be invoked. He submitted that the SHC also held that the department failed to establish wilful default or mens rea on the part of petitioners/ taxpayers in the subject cases; therefore, notices under section 182 (2) could not be validated and declared as illegal and resultantly of no consequence. He said on default, if the show-cause notices were issued for their tax explanation then how did the department failed to establish wilful default at this stage.

According to the FBR appeal, after the amendments in the ITO, under the jurisdiction of AEOI Zone, Karachi alone, 650 taxpayers were required to file the foreign income and assets statement under Section 116A (1) along with tax return for tax year 2019. The counsel submitted that out of the total, 433 taxpayers duly complied and filed the statement in time as required under the amended law.

The department issued show-cause notices to the remaining 217 taxpayers upon established default. Out of them, 182 taxpayers complied with the notices, and filed replies and adopted the due course provided under the ITO amended provisions. The rest (35) of the taxpayers did not file replies and challenged the notices before the SHC, which decided in their favour.

The counsel submitted that the SHC has failed to appreciate and ignored the correct application of new amendments made through Finance Act, 2018 in Section 116A (1) and Section 182(1) at Serial (1AAA) of the ITO that the legislature is empowered to tax foreign income earned from Offshore Trusts and Companies controlled by resident Pakistanis. Hafiz Ahsaan argued that the SHC failed to appreciate that Foreign Income and Assets Statement under Section 116A (1) are different in nature and provide different financial positions of taxpayers and serves the different purposes of resident taxpayers for the financial transparency in Pakistan. He stated that the subject petitions were premature and not maintainable against these show-cause notices, adding only replies were sought and neither any assessment order was not passed nor adjudication was finalized against taxpayers. He said the remedy along with complete process for challenging the same, if aggrieved, has been prescribed and was available with tax payers under different provisions of the Income Tax Ordinance, 2001;

therefore, the impugned judgment is liable to be set aside. He said the high court invalidated show-cause notices proceedings in constitutional jurisdiction, adding that the superior courts held that when regular adjudication proceedings were pending before the authority under the Special Taxing Statutes then those need to be responded and resolved before the Authority and the Forums, provided under the statute for such purpose, and any departure from such legal procedure would amount to frustrate the proceedings initiated by the public functionaries under the law. He also submitted that the SHC ought to have looked into the matter with different angles as to whether compliance of law at the time of invoking show-cause notices proceedings has been made or if any of the provisions has been omitted or violated then what prejudice is likely to cause to the taxpayer to whom show-cause notice was given. He said; however, in the instant case, no prejudice was caused to the taxpayers as the compliance of the relevant law was made by the department without any malafide and jurisdictional defect. He stated that as these aspects have been totally ignored, while passing the impugned judgment; therefore, it is liable to be set aside.

The bench after hearing the arguments accepted the contentions of the FBR and issued a leave granting order and suspended the judgment of the SHC.

R 11-1-2022

# TECHNOLOGY AT WORK TO BROADEN TAX NET, END HARASSMENT: SHAUKAT TARIN

ISLAMABAD: Finance Minister Shaukat Tarin on Monday informed the Senate Standing Committee on Finance, Revenue and Economic Affairs that the government will use technology not only to bring potential individuals into the tax net but also protect taxpayers from tax officials' harassment. Mr Tarin was responding to questions of the senators during the briefing on the Finance (Supplementary) Bill 2021. The committee continued its deliberations for the fourth consecutive day under the chairmanship of Talha Mehmood. Mr Tarin said that a portal will be created which will give accurate information about the assets of individuals and estimated due tax on it. He said the Federal Board of Revenue (FBR) and National Data Registration Authority (Nadra) are working together on this project.

On the issue of State Bank of Pakistan's autonomy bill, the minister briefed the senators on salient features of the proposed amendments and how these were different from those proposed in March 2021. "Impression of compromise on SBP's sovereignty is not correct," he said. He said the FBR will raise maximum tax on the supply-side chain which is mostly untaxed. He said the introduction of the Track and Trace System will also help FBR raise maximum taxes on the actual supply of products like tobacco, sugar, etc.

On the issue of IMF proposals for taxation, the minister said that the fund has suggested plugging tax evasions. He said the tax reforms should have been done in the year 2010 especially the imposition of the value-added tax. He said the worth of retail sales is almost Rs20 trillion. Of these Rs16tr sales is out of the tax net, he claimed.

The minister said that a robust tax refunds system is in place and we will repay refunds in seven days. He said the government still has protected several sectors' tax exemptions and will also offer targeted subsidies. He held out an assurance to the committee that he would give importance to its recommendations. He said that he took up the issue with the IMF to give extra time to the parliament to debate on the proposed measures.

Senator Talha said that the committee recommendations should be taken seriously. On this, Mr Tarin replied that he was ready to sit with the committee on a monthly basis to discuss and resolve issues. He explained various funding programmes for the youth including the provision of cheaper loans through banks. He said the government was also providing up to Rs500,000 interest-free loans to farmers.The committee unanimously rejected the proposal to impose an advance tax on mobile phone cards.

The representative of Export Processing Zones (EPZs) Idris - Gigi informed the committee that the FBR proposed a tax on the import of machinery for the processing zones. The FBR officials replied to this that the refunds will be provided to EPZ exporters within 48 hours.

Dawn 11-1-2022

# FBR TO PRESENT NEW TAX POLICY FRAMEWORK TO CABINET

ISLAMABAD: To end the policy of tax exemptions in the future, the Federal Board of Revenue (FBR) Chairman, Dr Muhammad Ashfaq Ahmed, said Monday that the FBR will present a new tax policy framework to the federal cabinet to bar ministries/divisions from proposing tax exemptions/incentives.

The FBR chairman disclosed before the Senate Standing Committee on Finance that the FBR has chalked out a new tax policy framework on exemptions. The policy would be taken to the Cabinet for approval. Under the new tax policy framework, no ministry/division would be allowed to propose tax incentives to any specific company/sector etc. He added that the policy has been drafted to discourage the practice of tax exemptions in the future.

The FBR chairman further said that when we argue before the IMF for continuation of tax exemptions for investment and industrialisation in the country, the fund responded that if we agree with this argument then Pakistan should have been the biggest industrial hub of the world.

## SENATE BODY REJECTS KEY PROPOSALS OF FINANCE BILL

ISLAMABAD: The Senate Standing Committee on Finance has rejected some key provisions of the Finance Supplementary Bill, 2021 including provision of digital payment, disclosure of information of public office holders, increase withholding tax from 10 to 15 percent of cellular services, 17 percent sales tax on seeds, 17 percent sales tax on locally-manufactured mobile phones, and increase in the rate of withholding tax on purchase of motor vehicles to discharge on money.

The committee completed the review of the Finance Supplementary Bill, 2021, on Monday, and will finalise its recommendations for the Senate today (Tuesday). However, committee proceedings were suspended for 10 minutes due to a fight between Senator Saadia Abbasi of the PML-N and Senator Dr Shahzad Wasim of the PTI. Through the Finance (Supplementary) Bill, 2021, the FBR has been empowered to disclose information of politically-exposed persons. The amendment has been proposed whereby the particulars of high-level public officials and public servants in BPS-17 and above, their spouses, their children, or Benamidars, shall not be precluded from disclosure by section 216(1) of the Income Tax Ordinance, 2001. Committee members objected that it is a dangerous amendment and will be used for political victimisation.

Finance Minister Shaukat Tarin informed the committee that the amendment proposed in section 216 of the Income Tax Ordinance, 2001, regarding disclosing information of the politically-exposed persons was demand of the International Monetary Fund (IMF), "but I will consider the recommendation of the committee".

The committee strongly recommended that the definition of the "digital means" as defined by the State Bank of Pakistan (SBP) be incorporated in the Income Tax Ordinance 2001 through the Finance Supplementary Bill, 2021. Chairman FBR Dr Muhammad Ashfaq Ahmed said that the confusion of the business community was removed by incorporating definition of the "digital means" of the SBP. The technology is rapidly evolving every day and therefore we have not specified the definition of the digital mode in the Income Tax Ordinance, 2001. He added that 99 percent of the transactions taking place in the market are through cheques. However, committee members objected that the definition should be made part of the law. The FBR chairman agreed that the definition of the digital means would be incorporated in the Finance Supplementary Bill, 2021. Dr Ashfaq Ahmed added that a reasonable amendment could be proposed that digital payment should not be enforced till the SBP confirms that all banks are fully ready for accepting digital payments of the companies. Senator Saleem Mandviwalla questioned why the government wanted to incorporate such a provision where 90 percent of the corporate sector would be penalised. While observing that the manual cheque system should operate parallel with the digital mode, Chairman of the Committee Senator Talha Mahmood rejected the provision of digital payment.

FBR Chairman informed that the withholding tax on foreign produced dramas/serials/plays has been proposed on the recommendation of the Ministry of Information. The committee supported a proposal to provide a list of business bank accounts to the FBR by the banks to encourage documentation. The Senate panel also unanimously rejected the imposed tax on "naan" and "bread" including the one prepared in bakeries. "Bread is consumed by all classes of society; children of the middle class use them for lunch," Senator Farooq Naek stated, while debating on the proposed amendment.

The committee also rejected the proposed imposition on yogurt, butter, desi ghee and milk, by majority vote, while tax has been imposed on flavoured milk, cheese, cream, and whey. The representative- Supreme Council of Export Processing Zone requested for the exemption of sales at import stage in EPZ on the analogy that the documentation is already done on imports.

The committee rejected a number of tax impositions by majority vote and gave recommendations on a way forward in the interest of the common public.

The All Pakistan Textile Mills Association submitted that the omission of the provision on the CNIC, which exempted the sellers from selling products to unregistered buyers in the market has been withdrawn in the new Finance Bill, shifting all obligations of verifications of validity of the CNIC on the complaint and registered seller mills. The All Pakistan Textile Mills Association submitted that the FBR also require seller to charge 3pc additional tax: and once 3pc additional tax is charged there should be no further penalty. The APTMA submitted that it is the duty of the FBR to register the persons to whom sales are made rather than putting on the industry to act as sub agents of the FBR in the matter of documentation and collection of taxes.

The committee accepted the proposal of the APTMA and recommended that no penalty should be imposed on the seller and that a solution against the unregistered market must be devised.

# 17PC GST ON DISASTER MANAGEMENT EQUIPMENT OPPOSED

KARACHI: Pakistan is always under the influence and pressure of natural/ climatic disasters that become calamity at the end of the day.

The Government without realizing the gravity of the circumstances, and on demand of International Monetary Fund (IMF), is proposing to impose through their finance supplementary bill 2021 a 17% GST on import of plant & machinery including the items to be used in disaster management, which is pathetic, said Ateeq Ur Rehman (Economic & Financial Analyst). He added that due to global climatic changes, the countries like Pakistan always faces disasters like flood, heavy rains, storm, heavy snow falls, earth quake, avalanches, etc. Thus because of 'mini-budget' and adding to the cost by 17% GST will further make the disaster management equipments more expensive, making things more difficult. He said that we have very limited earth moving machinery available for communication, transportation and rescue operations; therefore, the dire shortage of it is the great hindrance in infrastructure development and disaster management.

The biggest example of it is the recent example of Murree incident of huge snow storm and mismanagement by the unprepared district administration due to which nearly 0.1 million visitors and thousands vehicles were affected, each having his or her own account of suffering without any help for days and hours. He requested that government should realise the responsibility and should tailor the policies and planning's according to the requirement and necessities.

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# RETAIL PRICE OF SUGAR MAY BE ABOLISHED FOR SALES TAX

ISLAMABAD: The government has proposed to withdraw sugar for charging sales tax on retail price by making amendment in the main tax law. Through **Finance (Supplementary) Bill, 2021 dated December 30, 2021,** the government proposed to withdraw the condition of collecting sales tax on sugar retail price.

The government after just six months of making legislation regarding sales tax on sugar has proposed to withdraw the law. In case the parliament approve the bill, then whatever retail price is the sales tax to be collected at the value notified by the Federal Board of Revenue (FBR). The FBR through SRO 1027(I)/2021 dated August 16, 2021, notified the minimum value of the domestically produced white crystalline sugar at Rs72.22 per kilogram from Rs60/kg.

The FBR on July 01, 2021 issued Circular No. 02 of 2021 to explain inclusion of sugar in the Third Schedule to the Sales Tax Act, 1990. "Currently, the price of white crystalline sugar is fixed at Rs60/kg in terms of SRO 812(I)/2016 dated September 02, 2016, which is considerably below the actual market price of the commodity. In order to address this anomaly, sugar is proposed to be included in the Third Schedule to the Sales Tax Act, 1990, so that sales tax is charged and collected on actual retail price of the product at the manufacturing stage. "This measure would not only ensure due payment but also help in putting a more effective price control mechanism in place for sugar."

In its memorandum on the finance supplementary bill, PwC A. F. Ferguson & Co. – a chartered accountancy firm, said that goods specified in the Third Schedule are subject to sales tax on their retail price. "At present, the Government is empowered to include or exclude any goods from the Third Schedule through a notification. The Bill proposes to vest such power to the Board [FBR]."

Through the Finance, 2021 sugar was included in the Third Schedule whereby sugar supplied other than as industrial raw material to pharmaceutical, beverage and confectionary industries was subject to sales tax at retail price. Through SRO 989(I)/2021 dated August 5, 2021, sugar was taken out of Third Schedule for the period from July 1, 2021 till November 30, 2021.

The bill proposes to exclude sugar from Third Schedule w.e.f. December 1, 2021; thus, making it liable to sales tax at its value of supply across the board. KPMG Taseer Hadi & Co. – another chartered accountancy firm, explained that the Finance Act, 2021 had put sugar at serial No. 50 of the Third Schedule with the exception of sugar supplied as an industrial raw material to pharmaceutical, beverage and confectionary industries. "Now the bill proposes to omit the entry, effective from December 01, 2021, meaning thereby that henceforth supply of sugar will be taxable at 17 per cent of the value thereof."

PR 10-1-2022

# DAWOOD TELLS PRGMEA: TEXTILE, APPAREL POLICY 2020-25 NOT WITHDRAWN

LAHORE: Adviser to the Prime Minister on Commerce and Textiles Abdul Razak Dawood has made it clear that the Commerce ministry has not withdrawn the Textile & Apparel Policy 2020-25 while the facility of Duty Drawback of Local Taxes and Levies (DLTL) for the textile sector will continue in future in order to increase the export of value-added textiles. He was addressing a conference arranged by the Pakistan Readymade Garments Manufacturers and Exporters Association (PRGMEA) here at a local hotel. Besides PRGMEA regional Chairman Sheikh Luqman Amin, the meeting was attended by PRGMEA former Chairman Mubashar Butt, Sohail Afzal Sheikh and representatives of the Pakistan Hosiery Manufacturers & Exporters Association (PHMA).

The PM Advisor assured the value-added textile sector's stakeholders of raising their problems with PM Imran Khan and the federal cabinet. The adviser said the government would consider and resolve all issues that were highlighted during the meeting. Razak Dawood said that the textile sector has been playing a major role in stabilizing the national economy. Therefore, the government was also striving hard to resolve problems of this sector on a priority basis.

The Adviser to Prime Minister, highlighting the positive outcome of the 'Make-in-Pakistan' policy, said that that investment of billions of rupee is in the pipeline under which new textile units are expected to be established, which will apart from enhancing export capacity are likely to create about hundreds of thousands of jobs. He said that the government has reversed the de-industrialization process, as we are now on a path of industrial growth in Pakistan. In August 2020, the government had announced the 'Make-in-Pakistan' policy in order to promote export-oriented industrialization in the country. Under the policy, the government had reduced duties on hundreds of tariff lines involving raw material for the local industry to make domestic products competitive. Abdul Razak Dawood said that diversification in exports that wasn't registered in the past, has started taking place in the country.

The adviser said that in the last three years, the exports of non-traditional products to the traditional markets have increased significantly, as the government has geared up its endeavours to further consolidate the diversification in the exports. He said that the increasing imports have posed a threat to the trade deficit and to this effect the government is in the process of identifying the items, of which the tariffs will be increased to discourage the imports. We have done a lot of work to fight the case of the GSP Plus facility he said and expressed the hope that Pakistan will be able to get the extension in the GSP Plus facility from the European Union.

Earlier, PRGMEA regional chairman Sheikh Luqman Amin gave a brief introduction of the value-added apparel sector, stating the PRGMEA is the largest and elected body of garments exporters, having thousands of member companies in its folds across the country, earning foreign exchange of over $3.5 billion annually for the country. He, while representing the value-added textile industry, urged the advisor to abolish all duties and taxes, allowing duty-free import of cotton yarn which is a basic raw material of the value-added textile sector.

The participants of the meeting called upon the government to place a ban on export of cotton yarn of 30 single or below count in order to ensure availability of quality yarn to the export sector so that orders can be completed without hassle and unrest. They said the government should consider allowing import of cotton yarn from India via the Wagha border as quality yarn is not available and prices are soaring. Likewise, the apparel industry representatives further sought freeze in the special tariffs of 7.5 cents for electricity and $6.5 for gas for at least next three years and provision of uninterrupted electricity and gas for meeting export orders.

The value-added textile sector leader said that Prime Minister Imran Khan's plans for industrialization, increasing exports, creating trade surplus, generation of employment opportunities and earning precious foreign exchange can only become possible when cotton yarn and uninterrupted supply of utilities is ensured on special tariffs.

# IMPORT OF VEHICLES, OTHER ITEMS: CABINET TO APPROVE DUTIES' RATIONALIZATION - ON JANUARY 5, 2022, MINISTRY OF COMMERCE BRIEFED THE ECC ABOUT THE CHANGES REGARDING IMPOSITION/ REMOVAL OF REGULATORY DUTIES (RD) ON DIFFERENT ITEMS

ISLAMABAD: The Federal Cabinet which is scheduled to meet on Tuesday (today) with Prime Minister Imran Khan in the chair will approve rationalization of duties on import of vehicles and other items, recommended by the Economic Coordination Committee (ECC). On January 5, 2022, Ministry of Commerce briefed the ECC about the changes regarding imposition/ removal of Regulatory Duties (RD) on different items, in line with the decisions of the Tariff Policy Board (TPB) taken in its 34th and 35th meeting. Well informed sources told *Business Recorder* that after detailed discussion, the ECC approved imposition of 10% Regulatory Duty (instead of 27%) on import of Electrical Vehicles (EVs) in CBU condition of more than 50 KWH battery pack excluding commercial buses and trucks.

Other decisions were as follows: (i) increased Regulatory Duty from 15% to 50% on import of all type of hybrid vehicles in CBU condition, exceeding 1500cc but not exceeding 1800cc;(iii) increased Regulatory Duty from 15% to 50% on import of vehicles having spark/ compression engine (conventional engines) in CBU condition exceeding 850cc but not exceeding 1800cc; (iii) levied 10% Regulatory Duty on textile material polypropylene under HS Codes 5402.4800, 5402.5300, 5402.6300, 5404.1200, 5503.4000 and 5506.4000 to address the tariff anomaly; (iv) removed 5% Regulatory Duty on varnishes (HS Code 3208.2010), being raw material/ used in making of furniture and;(v) levied 20% Regulatory Duty on import of Soda Ash (HS Code 2836.2000) for the period of six months.

The decisions regarding auto sector shall be implemented for six months (up to June 30, 2022) and shall be reviewed before budget for the next financial year.

The Cabinet will also discuss political, economic and EVMs related issues in addition to Murree incident which claimed 23 lives. Minister for Planning, Development and Special Initiatives, Asad Umar, will brief the Cabinet about Covid-19 and Omicron.

Other items of agenda are as follows: (i) appointment of Chairman and Members of Copyright Board of Intellectual Property Organization of Pakistan (IPO-P) ;(ii) ex-post facto approval for acceptance of award “Noot-ul-Tamreen Medals” by 100 personnel of PAF by Saudi Arabia;(iii) residential project for Overseas Pakistanis at Park Road Zone-4 Islamabad under Roshan Digital Account incentives;(iv) registration of existing Credit Guarantee Trust under Islamabad Capital Territory Trust Act, 2020;(v) approval of CDA budget estimates 2021-22 and revised estimates for the financial year 202021;(vi) extension in contract of Raza Abbas Shah, CEO, EDB;(vii) tariff rationalization for power sector- quarterly tariff adjustment for 4th quarter for FY 2020-21;(viii) regularization of non-customs paid vehicles plying in ex-FATA/ PATA via one-time concession in duties/ taxes;(ix) approval of draft interfaith harmony policy;(x) appointment as member National Commission for Minorities (NCM) from Christian community;(xi) Science, Technology and innovation Policy-2021;(xii) appointment of Federal Government analyst (Narcotics);(xiii) appointment of Chairman of PTDC Board of Directors (BoDs) and National Tourism Coordination Board (NTCB);( xiv) ratification of decision taken by the Cabinet Committee on Institutional Reforms (CCIR) in its meeting held on December 22, 2021; and (xv) ratification of ECC decisions take on December 31, 2021 and January 5, 2022.

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