

## **WORLD BANK'S PRR PROJECT: FBR ASKED TO COORDINATE WITH PROVINCES ON GST- AND IPF-RELATED MATTERS**

ISLAMABAD: A joint panel of Economic Affairs Division (EAD) and World Bank (WB) has directed Federal Board of Revenue (FBR) to coordinate with the Provincial Governments to ensure timely achievement of targets relating to GST and expedite the implementation of IPF part of the project to ensure timely utilization of the available funds under Pakistan Raises Revenue (PRR) project, well informed sources told *Business Recorder*. At a recent meeting on World Bank projects held in EAD it was reported that around \$111 million disbursement (overdue \$55.3 million + due in CFY \$55.8 million) under Pakistan Raises Revenue project would be achieved subject to quick implementation by the FBR as World Bank estimates disbursement of around \$ 75.45 million is achievable during CFY.

In response to a query, the Project Director shared that coordination with Provincial Governments is ongoing to achieve the GST-related targets under PRR that are also linked with the RISE-II and DPF. Monthly meetings are also being organized under the co-chairmanship of Chairman FBR and Country Director WB to help expedite the project's implementation. Disbursements of around \$41.568 million was under process at WB level and the 2nd disbursement up to US \$34 million would be possibly secured by June 2023.

The Senior Joint Secretary (WB) MoEA stated that the FBR intends to restructure the project with one year extension. In the restructuring FBR has proposed diverting \$ 10 million financing from results-based component towards Investment Project Finance (IPF) component. He further elaborated that out of total financing of \$400 million, \$320 million is allocated towards results-based component as budgetary support and \$80 million is available for FBR under IPF component as operational cost. It was noted that in spite of the lapse of considerable time since launch of this project in June 2019, FBR could only utilize \$4-5 million under IPF component. He further shared that considering the implementation lag and clear approved allocation of funds between results-based and IPF parts of the project, EAD does not support shifting of \$ 10 million from results-based component to IPF component as funding allocation to results-based component is only meant for budgetary support. He, however, opined that request regarding one year extension can be considered subject to speedy implementation of the project by FBR. The meeting decided that FBR will coordinate with the Provincial Governments to ensure timely achievement of DLRs relating to CST and expedite the implementation of IPF part of the project to ensure timely utilization of the available funds.

Financial Inclusion Project: The project has not disbursed any funds since July 2021. A \$33.1 million disbursement was made in June 2021 to finance an SME credit guarantee facility and these funds remain unutilized in spite of MoEA's organizing a number of meetings and subsequent reminders the decision regarding establishment of the guarantee facility and allocation of rupee cover to utilize the funds disbursed in FY 2021 has not been made so far.

In order to ensure the disbursed funds could be utilized, the World Bank restructured the project in December 2022 with time extension till June 30, 2023. It was observed that if funds are not deployed soon, the disbursed amount of \$ 33.1 million will have to be refunded to the World Bank immediately after closure of project. Similarly, the revision of PC-1 for reallocation of \$ 33.1 million to LoC and repurposing of funds initially kept for CDNS and their allocation to SBP is also pending. Secretary MoEA took serious note of this lapse and desired the Finance Division to take immediate measures for revision of PC-1 to ensure diverting \$ 9.2 towards LoC and time extension of the program, revise the LoC operational Manual and ensure allocation of rupee cover for timely utilization of disbursed amount to avoid its possible refund.

The meeting decided that Finance Division and SBP must ensure: (i) rupee cover for the \$ 33.1 million is made at the earliest; (ii) immediate revision of PC-1 of the project and early finalization of LoC operational manual including revision and/ or additional agreement for transfer of \$ 9.2 million towards.

## **WEALTHY PERSONS: FBR RELUCTANT TO GIVE INFO ABOUT TAX PAYMENTS**

ISLAMABAD: The Federal Board of Revenue (FBR) is reluctant to disclose vital information regarding tax payments made by Politically-Exposed Persons (PEP) including high-level public officials (BPS-17 & above), their spouses/children/benamidars or beneficial owners on account of capital value tax on foreign assets, super tax and tax on deemed income basis introduced through the Finance Act 2022.

FBR Chairman Asim Ahmed has received a letter of the Lahore-based tax lawyer Waheed Shahzad Butt seeking data from the FBR. According to the letter, an advocate of Lahore Waheed Shahzad Butt had requested access to this information under the Right of Access to Information Act, 2017 (RTI). The FBR's long silence has once again proved that the RTI law is toothless and authorities are using it to deny even the basic data which was not declared as confidential under the FBR laws.

The lawyer had requested a complete breakdown of the total payments made to the national exchequer by PEP for CVT, Super Tax and Deemed income tax. It is stated that due to untiring efforts made by Pakistan Information Commission, government has decided to remove restrictions on the FBR from not disclosing information of the politically-exposed persons including high-level public officials under the Finance (Supplementary) Act, 2022.

Article 19-A of the Constitution enabled every Citizen of Pakistan to become independent of power centre to seek information on matters of public importance, Waheed Shahzad Butt added.

## **FINANCE ACT CHALLENGED: TAXPAYERS PAY RS3BN COURT FEES FOR 6,000 PETITIONS AGAINST FBR**

ISLAMABAD: Taxpayers have paid huge amount of Rs2.5 billion to Rs3 billion as fees for filing 6,000 petitions in different courts against the Federal Board of Revenue's taxation measures taken through the Finance Act 2022. These measures include imposition of super tax, Capital Value Tax (CVT) on foreign assets and tax on deemed income basis.

Sources told Business Recorder Saturday the FBR has estimated that around Rs2.5 billion to Rs3 billion has been paid as fee to the tax lawyers, tax advisers and consultants for fighting the cases against the FBR in courts against the CVT on foreign assets, super tax, and tax on deemed income basis. If all petitions are totaled which were filed at various judicial fora by different individuals as well as companies etc, the total comes to around 6,000. The FBR is also verifying the payments of such huge amount of fees from different sources.

The CVT on foreign assets was due by December 15, 2022, and the tax on deemed income basis by December 31, 2022. The Supreme Court had directed high-income earners to pay 50 per cent of the due liability with regard to the super tax. The super tax was imposed on the profits of wealthy corporations whose earnings exceeded Rs150 million through the Finance Act, 2022. The government had inserted Section 4C in the Income Tax Ordinance to charge the super tax from 13 specific sectors. The government imposed the super tax on banks, cement, iron and steel, sugar, oil and gas, fertilisers, LNG terminals, textile, automobile, cigarettes, beverages, chemicals, and airlines.

Similarly, the Sindh High Court (SHC) had already dismissed the petitions challenging the levy of tax on foreign assets of a resident individual as defined in Section 8(13) (c) of the Finance Act, 2022. In the past, the judgment of a division bench of the SHC said: "We do not see any justifiable reason to declare the provisions of Section 8 of the Finance Act, 2022, as ultra vires to the Constitution; hence all these petitions are hereby dismissed." 172 petitioners had challenged vires of Section 8 of the Finance Act, 2022, whereby, a tax has been levied on the value of assets at the rates specified in the First Schedule to that Section for the tax year 2022 and onwards, whereas, the present challenge of the petitioners is in respect of and only to the extent of Section 8(2)(b), ie, levy of tax on foreign assets of a resident individual as defined in Section 8(13) (c) which includes moveable and immovable properties. The main challenge was that the Parliament has no legislative competence to levy such a tax on foreign assets of the petitioners.

The SHC has dismissed petitions filed against imposition of tax on immovable properties on "deemed income basis" under section 7E of Income Tax Ordinance, 2001.

## **TAX MATTERS: APPELLATE TRIBUNAL IS FINAL FORUM FOR DETERMINATION OF FACTS: SC**

ISLAMABAD: The Supreme Court held that the Appellate Tribunal is the final forum for the determinations of the facts in the tax matters, and its findings of facts are conclusive.

A three-judge bench, headed by Justice Qazi Faez Isa and comprised Justice Yahya Afridi and Justice Muhammad Ali Mazhar, dismissed the petition of Collector of Sales Tax and Central Excise, Lahore. During audit proceedings it was revealed that M/s Qadbros Engineering (Pvt) Ltd (respondent) had claimed input adjustment of sales tax paid earlier on purchases from their sister unit M/s Qadri Brothers (Pvt.) Ltd. A Show Cause Notice was issued to the respondent on 2.2.1998 with the allegation that it had wrongfully claimed input adjustment of sales tax on the purchase of channels from its sister unit, Qadri Brothers (Pvt) Ltd. Whereas said sister unit M/s Qadri Brothers (Pvt) Ltd. was paying fixed sales tax on fixed production basis under the SRO.630(I)/1995 dated 02.07.1995, therefore the invoices No. 1 to 150 were issued by M/s Qadri Brothers (Pvt) Ltd. to illegally provide the benefit of input tax adjustment to its sister concern.

The record reflects that the proceedings activated from the Show Cause culminated in the Order-in-Original dated 10.06.1999 against the respondent, which was challenged in appeal before the Collector of Central Excise & Sales Tax, Lahore. The appeal was dismissed vide Order dated 07.10.1999. Eventually, the respondent approached the Customs, Excise and Sales Tax Appellate Tribunal, Lahore and filed an appeal, which rendered the decision against the Department on 21.12.2004. The Department challenged the verdict before the Lahore High Court, which was dismissed on 12-11-2020.

The Supreme Court judgment noted that the department completely failed to establish that M/s Qadbros Engineering (Pvt) Ltd (respondent) is the sister concern or a subsidiary company of the M/s Qadri Brothers (Pvt.) Ltd. (supplier). No tangible evidence was produced including the record, if any, obtained from the Securities and Exchange Commission of Pakistan (SECP) in relation to the incorporation and substratum of both the companies together with the verification of holding company of the alleged subsidiary company. It said that no material or concrete evidence was produced by the department to substantiate the principal ground of sister concern relationship. The Tribunal had judiciously examined the pith and substance of the transaction and then rightly reached the conclusion that the respondent is not a subsidiary or holding company of M/s Qadri Brothers (Pvt.) Ltd.

The predominant allegation in the Show Cause was that M/s Qadri Brothers was paying fixed sales tax on fixed production basis; therefore the invoices No. 1 to 150 were arranged by it to provide the undue benefit of input adjustment to its sister concern M/s Qadbros Engineering (respondent). Notwithstanding the fixed sales tax payment structure, M/s Qadri Brothers, being an independent registered person is not proscribed under the letter of law from issuing invoices as a supplier against the sales made to the buyers.

The invoices were issued under Section 7 of the 1990 Act which permits the adjustment of input tax with a rider under Sub-section (2). If the supplier issued invoices erroneously or in violation of law then the Department should have initiated legal action for recovery against them rather than the buyer which is not the sister concern or subsidiary company of the supplier. In all fairness, if some fault was committed by the supplier while issuing invoices then the respondent could not be penalized or disqualified from claiming input tax adjustment in accordance with the law.

The Tribunal is the final forum to settle all the factual aspects in the matter and the findings of fact recorded by the Tribunal are considered final. No doubt the Appellate Tribunal, being cognizant of its jurisdiction as conferred by the law, engaged it in order to unravel the alleged claim of input adjustment by means of the stratagem adopted by the respondent assessee and also determined the true character of the transactions but did not find out that the respondent, being a subsidiary company, embarked on any fake or sham transaction or applied any feigned modus of presenting paper transactions or fake invoices issued by its sister concern with the sole intent of claiming tax benefit.

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## **FBR STREAMLINES FASTER, THE MECHANISM OF SALES TAX REFUND TO MANUFACTURERS OF EXPORT ORIENTED GOODS**

KARACHI: After abolition of zero-rated tax regime under SRO 1125, purchases (whether through imports or domestic supplies) in textile sector were subjected to sales tax @ 17% and the inputs consumed in exported goods, thus, became liable to be refunded to the exporters. In order to facilitate the cash flow requirements of export-oriented sectors particularly textile exporters, an automated Sales Tax e-Refund System (FASTER) was introduced to process and sanction exporters' refunds expeditiously.

However, it continued to malfunction on multiple counts producing suboptimal outcomes and was found deficient in effectively analyzing the admissibility of refund in relation to quantity and quality of inputs claimed by the taxpayers, resulting in allowing portion of refund relating to such inputs which otherwise were not liable to be allowed either on the basis of excess consumption or otherwise being inadmissible under the law.

These system glitches created problems for exporters in terms of uncertainty and stuck-up liquidity, and for the tax administration in terms of credibility deficit.

Hence, in order to ensure certainty, transparency and truthfulness in processing of sales tax refunds across-the-board and issuance of valid and legitimate refunds to the exporting units, and also to safeguard the government revenue, FBR has decided to upgrade the automated system by incorporating benchmarks and input/output ratios which were finalized after due deliberations made with members from Customs authorities, Textile Exporters Association of Pakistan, Hosiery Manufacturer Association, IOCO Directorate, Consultants on Textile Sector study and Inland Revenue officers.

Therefore, Federal Board of Revenue (FBR) has made following alterations in fully automated system-FASTER.

- (i) Value addition check shall be 15% both for exports and local supplies for filing of Annex-H for current tax period.
- (ii) The total amount of refund paid against the claims filed and processed shall not exceed the lower of the two amounts, namely, the amount of input tax actually consumed in goods as exported/supplied at zero-rated rate, or 12% of the exports.

(iii) Inadmissible inputs in terms of Section 8 of the Sales Tax Act, 1990 shall not be allowed during processing of refunds through FASTER.

(iv) Input tax adjustment shall not be allowed to the manufacturers of these sectors on the goods which are not related to their business activity.

(v) The suppliers who have attained status of abnormal tax profile or blacklisted shall not be processed by automated system FASTER.

In addition to the checks/risk parameters already implemented through FASTER, the following risk parameters shall be applied in the automated refund processing system;

Risk Parameters:

I. FASTER shall defer proportionate input tax refund against export GD under objection.

II. Logical check shall be enabled in system to cross match the date of export GD with the date of purchase invoices.

III. Total amount of refund sanctioned and refund deferred shall not exceed the total amount of refund claim.

IV: First claim of refund by newly-registered exporters for first twelve months shall be excluded from FASTER and be processed through STARR / ERS.

V: Refund claim once excluded from FASTER shall not be allowed to roll back. It shall be processed only through STARR / ERS;

VI. For refund claim of a commercial exporters, the payment of such refund shall be made after the realization of export proceeds.

VII. Refund to the exporters against fixed assets shall not be processed through FASTER and shall be paid after verification of installation/utilization by the field formations.

VIII. Expenses incurred on utilities shall be prorated on the basis of consumption between zero rated supplies and domestic sales.

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## **EXPORTERS DETECT 'FLAWS' IN FBR'S NEW REFUND PROCEDURE**

ISLAMABAD: Prominent exporters have pointed out some serious flaws in the revised procedure of the Federal Board of Revenue (FBR) for the issuance of sales tax refunds to the exporters of five leading sectors, i.e., textile, leather, carpets, surgical and sports goods under an automated Sales Tax e-Refund System (FASTER). Leading exporters from Karachi told *Business Recorder* that the FBR has issued sales tax general order (STGO) 9 of 2023 for revision of the processing of the sales tax refunds under the FASTER system for leading export industries.

The analysis of the STGO revealed that there are some serious discrepancies and issues in the revised procedure. The FBR should issue a clarification to respond to the queries raised by the exporters to resolve their problems. Firstly, one of the new risk parameters is that the expenses incurred on utilities shall be prorated on the basis of consumption between zero-rated supplies and domestic sales.

Exporters raised a question that how the exporters will differentiate between the utilities consumed for export goods, as well as, those consumed for domestic sales. How the expenses incurred on utilities shall be prorated? All Value Added Textile Associations have objection on this point, because it is not possible for individual or the exporter to proportionate the utility consumption use in export & locally supplied goods. All Value Added Textile Associations have suggested that this check should be removed from the check/ risk parameters.

Exporters further said that the FBR has also issued a list of 714 items on which input tax adjustment shall not be allowed to five leading export-oriented industries.

However, the exporters are reviewing the list and it has been found that some items used by the said sectors are included in the negative list. For example, the negative list item number 212 is "Salt (including table salt and denatured salt) pure sodium chloride whether or not in aqueous solution sea water". Anyone working in the textile sector knows that salt is used by the industry but it has been included in the negative list.

Exporters will compile the list and communicate the same to the FBR for exclusion from the negative list of the sales tax general order 9 of 2023.

Exporters stated that according to the FBR's procedure, "these system glitches created problems for exporters in terms of uncertainty and stuck-up liquidity and for the tax administration in terms of credibility deficit". Exporters clarified that the export industry has always highly appreciated the FATSER system due to speedy payment of refunds and this is the unique feature of the FATSER system, 'but we have never talked about any system glitches'. The FASTER system was suspended and refund processing was stopped. We only requested to restore the system, they argued.

The FBR said that the total amount of refund paid against the claims filed and processed shall not exceed the lower of the two amounts, namely, the amount of input tax actually consumed in goods as exported/ supplied at zero-rated rate, or 12 percent of the exports. Exporters objected that as the standard rate of sales tax has been increased from 17 to 18 percent; therefore, the percentage of refunds should be more than 12 percent.

Point 5 of STGO clearly states that this will be applicable with effect from the return filed in the month of March 2023 but FBR has applied risk parameters in previous months' returns as well resulting in deferment of huge amount of sales tax refunds & issuance of Rs1 RPO. Moreover, the Point 5 of the STGO mentioning that "shall be applicable with effect from the return filed in the month of March 2023" which should be "Return filed for the month of March 2023".

A Risk Parameter Point 3 serial (iii) stating "Logical check shall be enabled in system to cross match the date of export GD with date of purchase invoices." This check is completely illogical & illegal because the purchase of raw material and its processing is a continuous process and there will be purchases after GD and shipping bill date as these purchase invoices belong to future shipments & inventory maintained by the manufacturer cum exporters.

For example, if an exporter ships goods on Jan 15 and has the next shipment in the month of February, should sales tax on purchases from January 16 to 30 should be deferred. The answer should be no, as these are purchases for shipments for the month of Feb onward. Application of this check has resulted in deferment of the huge amount of refunds.

A Risk Parameter- Point 3 serial (iv) stating "First Claim of refund by newly registered exporters for first twelve months shall be excluded from FASTER and processed through STARR/ERS." It is the effort by FBR to discourage entrance of new exporters as these claims took a long time to process. All Value Added Textile Associations have suggested that this check should be removed from the check/ risk parameters to encourage exports.

A Risk Parameter Point 3 serial (v) stating "Refund Claim once excluded from FASTER shall not be allowed to roll back it shall be processed only through STARR & ERS". The exporters cannot be blamed for the system error. All Value Added Textile Associations have objection on this Point as the entire process of FASTER System prescribed in the Sales Tax Refund Rules 2006 for processing of refund claims. Therefore, insertion of this check through STGO is entirely illegal. It has been advised by all the Value Added Textile Associations that this check shall be excluded, exporters requested.

The FBR procedure said that the Value Addition check shall be 15% both for exporters and local supplies for filling of Annexure H for current tax period. Responding to this, the exporters objected that since the FASTER system introduced, the Value addition matter had been discussed previously several times and been mutually agreed on 10% because all different textile sectors have different value addition on their products, for example, toll manufacturing or indirect exporters those who supply their product locally to the exporter and their value addition comes between 5% to 10%; therefore 15% threshold cannot be applied for both local supplies and for commercial exports. It has been advised by all the Value Added Textile Associations that Value Addition check shall be kept at 10% as previous both for exporters and local supplies for filling of Annexure H.

The FASTER shall defer proportionate input tax refund against export GD under objection. Exporters raised objection that all Value Added Textile Associations have objection on this Point as when the export GD is filed and the goods exported from Pakistan then there is no reason to defer the input tax refund through FASTER. The matters of Export GD which are under objection are entirely between the Customs and the Inland Revenue Service FBR's data communication matter. Exporters suggested that all Value Added Textile Associations have mutually agreed to exclude this check in the FASTER System.

## **SINDH REVENUE BOARD TO SEAL BUSINESSES NOT ON ACTIVE TAXPAYERS LIST**

KARACHI: Sindh Revenue Board (SRB) has been empowered to seal businesses of persons not on the active taxpayers list (ATL). Sources in the SRB told PKRevenue.com that the Sindh government has authorized the provincial revenue authority to take action against non-compliant businessmen through invoking provisions related to sealing business premises.

The sources said that the Sindh Assembly recently passed the Sind Sales Tax on Services (Amendment) Act which introduced many changes to the main law. A section 54B has been added to the Sindh Sales Tax on Service Act, which empowered the SRB to seal the business premises.

According to the Section: "If an officer of the SRB, not below the rank of a Commissioner, is satisfied that any person:

(a) is liable to be registered under this Act but is not actually registered in terms of the provisions of Section 24; or

(b) is not an active taxpayer in terms of the provisions of clause (1A) of Section 2; or

(c) is constantly non-compliant with the provisions of this act or the rules made thereunder,

he may, by an order in writing, direct that the business premises of that person be sealed for a period not exceeding four months after giving a notice in writing:

Provided that when the cause of such sealing, as aforesaid, has ceased to exist, such officer of the SRB shall, through an order in writing, direct the de-sealing of the sealed premises."

Prior to the latest amendment, the Sindh government already authorized the SRB to post an officer to business premises under Section 54 of the Act.

Section 54. Posting of an officer of the SRB to business premises.— (1) Subject to such conditions and restrictions, as it deems fit to impose, the Board may post an officer of the SRB to the premises of a registered person or class of such persons to monitor the provision of services by such registered person or persons.

(2) Notwithstanding anything contained in sub-section (1), if a Commissioner SRB, on the basis of material evidence, has reasonable cause to believe that a registered person is involved in evasion of sales tax or tax fraud, he may, by recording the reason in writing, post an officer of the SRB to the premises of such registered person to monitor provision of services by such person.

(3) The person, to whose premises an officer of the SRB is posted under this section, shall provide, on his own cost, all facilities to meet the departmental requirements of such posting as may be determined by the Board or the Commissioner SRB.

Explanation: The powers of the Board or the Commissioner SRB, under this section, are independent of the provisions of section 53.

Section 54A. Monitoring or tracking by electronic or other means.—(1) Subject to such conditions, restrictions and procedure, as it may deem fit to impose or specify, the Board may, by notification in the official Gazette, specify any registered person or class of registered persons or any of the services or class of services in respect of which monitoring or tracking of provision of service or services may be implemented through electronic or other means as may be prescribed.

(2) The Board may, in the prescribed manner, devise and implement an electronic system for monitoring and capturing the transactions recorded or the invoices issued by a registered person or a class of registered persons or a service or services or class of services, and transferring the information, obtained by such monitoring or capturing of transactions or invoices, to the computer systems of the Board on real time basis or otherwise.

(3) From such date as may be prescribed by the Board, the persons providing or rendering taxable services shall compulsorily use such electronic means or systems, including fiscal cash registers, as may be specified or prescribed by the Board, for issuance of tax invoice under the e-invoicing system.

## **SINDH BRINGS WEB HOSTING, CLOUD SERVICES UNDER TAX NET**

KARACHI: Sindh has brought web hosting and cloud services under provincial sales tax net, according to the amended law.

The Provincial Assembly of Sindh recently passed Sindh Sales Tax on Services (Amendment) Bill, 2021 to make amendments in the Sindh Sales Tax on Services Act, 2011. According to the amendments, a new clause 84B to Section 2 of the Act has been introduced for software and IT based system development consultants.

The Sindh Revenue Board (SRB) has defined the clause as the person providing or rendering the services in relation to software or information technology, including:

- The development of software, network or IT based system and maintenance.
- The study, analysis, design and programming of software or IT based system.
- The adaptation, up-gradation, customization, enhancement, integration, implementation and other similar services related to software or IT base system.
- Web hosting and cloud services.
- Provision of advice, guidance, consultancy and assistance in matters related to software or IT based system including conducting feasibility studies on implementation of a system.
- Provision of specifications for a database design, implementation and management.
- Provision of specification to secure database.
- Provision of the right, whether by licensing or otherwise, to use software or IT based system for commercial exploitation including right to reproduce, distribute and sell the software components for the creation of and inclusion in other software or IT based system products and the renewal of such a right or, license.
- Provision of the right, whether by licensing or otherwise, to use software or IT based system supplied electronically and the renewal of such a right or a license.