

SC ORDERS HIGH EARNERS TO DEPOSIT 50PC SUPER TAX IN TWO WEEKS: APEX COURT DIRECTS THE IHC AND LHC TO DECIDE THE SUPER TAX CASES AT THE EARLIEST

ISLAMABAD: The Supreme Court (SC) on Tuesday ordered the wealthy taxpayers to deposit 50% super tax within two weeks with the Federal Board of Revenue (FBR). A two-member bench of the apex court, headed by Chief Justice Umar Ata Bandial, heard the plea filed by the FBR against the impugned interim order of the LHC, which had stayed the recovery proceedings from high-earning taxpayers. During the hearing, counsel for the FBR told the court that the authority, while inserting a new section in the Income Tax Ordinance, had imposed super tax on wealthy taxpayers earning more than Rs15 crores. Through the Finance Act 2022, the government has imposed a super tax on high-earning persons by inserting a new Section 4C in the Income Tax Ordinance. Through the section, the FBR imposed a 10pc super tax on 13 sectors earning more than Rs150 million from tax year 2022.

The sectors are steel, banking, cement, cigarettes, chemicals, beverages, and liquefied natural gas terminals, airlines, textile, automobile, sugar mills, oil and gas and fertilizers.

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BUDGET 2023-2024: PSX SUGGESTS ALIGNING CGT ON DISPOSAL OF SECURITIES, IMMOVABLE PROPERTIES

Pakistan Stock Exchange (PSX) in its proposals for budget 2023-2024 suggested to align rates of capital gains tax on disposal of listed securities with the rates of CGT on sale of immovable property.

The PSX has submitted its tax proposals for the budget 2023-2024. Giving rationale to the proposal, the PSX stated that it would encourage documentation of real estate activity, and lead to an easing of speculative pressure on real estate property prices in Pakistan, where much of the undocumented wealth has been currency flowing.

The stock exchange in its proposals suggested to align rates of capital gains tax on disposal of listed securities with the rates of CGT on sale of immovable property. During discussions with respect to the Federal Budget 2022-2023 with the then finance minister and the chairman of the Federal Board of Revenue (FBR), a consensus was developed that the tax on capital gains on the listed securities should be uniform with that on real estate and other classes of assets. "This is important to remove any tax driven distortions amongst different asset classes and to create a level playing field to ensure efficient allocation of scarce resources," it added.

On June 10, 2022, Finance Bill 2022 addressed the issue through introduction of revised rates based on holding period, aligning capital gain tax rates on disposal of securities with rate of disposal of immovable properties. "However, the Finance Act, 2022 has again created such tax disparity between securities and immovable properties."

The stock exchange further stated that currently carry forward of loss is allowed up to a period of three years. Last year and the year before CGT collection was merely Rs 5.6 billion and Rs 8.8 billion respectively. Moreover, brought forward losses amounting to Rs 281 billion are available to be adjusted against future capital gains, therefore CGT collection will continue to be negligible.

In addition, all derivatives and future contracts traded on stock exchange are subject to higher CGT that should be aligned with future commodity contracts traded at PMEX. The PSX has proposed capital gains tax (CGT) rate should be reduced to 5 per cent for all derivatives and future contracts traded on stock exchange. The proposed tax rate is in line with tax rate on future commodity contracts entered into by the members of Pakistan Mercantile Exchange. It is also recommended by the PSX to remove the flat CGT rate of 12.5 per cent applicable on disposal of securities acquired on or before June 30, 2022, so that gain on such securities be subject to the same rates as applicable on securities acquired after June 30, 2022.

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PROVINCES & CENTRE AGREE ON HARMONIZATION OF GST ON FOUR SERVICES: ADVERTISEMENT SERVICES, INSURANCE SERVICES, FRANCHISE SERVICES AND TRANSPORTATION SERVICES

ISLAMABAD: In a bid to comply with the World Bank's loan condition of RISE-II, the Centre and four provinces have evolved a broader consensus over the place of supply rules for advertisement services, insurance services, franchise services and transportation services for harmonization of GST on services. Now the National Tax Council (NTC) is expected to hold its meeting under the chairmanship of Minister for Finance Ishaq Dar in the coming days in order to grant final assent to the agreed rules on four major services within the provinces as well as in the Islamabad Capital Territory (ICT) for the Federal Board of Revenue (FBR).

The lack of harmonization of GST among the Centre and the provinces has remained a major stumbling block in the way for approval of the Resilient Institutions for Sustainable Economy (RISE-II) loan of \$950 million from the World Bank and AIIB. The relevant parties made last-ditch efforts to evolve a consensus on the definition of goods and services, bringing uniformity related to GST laws, tax rates, and scope of GST. Top official sources confirmed to The News on Tuesday that the FBR agreed to the consensus arrived at by the Provincial Finance Departments and Provincial Revenue Authorities (PRAs) on supply rules for four major services as it would be a step forward on a long outstanding issue, which would distinctly improve Pakistan's standing on the Ease of Doing Business Index.

All the provincial representatives and chairman FBR recorded their consent to the recommendations of the ECNTC on the framework of the Place of Supply Rules. Under the agreed rules on advertisement services/advertising agents in the case of an advertisement on TV, the location of beaming station has been agreed upon as a consensus point for taxation. For radio advertisements, the location of radio station will become the basis for taxation. The location of the hoarding site and billboard will be determined as a basis for the taxation of advertisements on the still media. Similarly, for advertising agent services, the location of the advertisement agent office/branch would be determined for taxation.

For insurance services such as life/health insurance, the location of the office/branch providing the service will serve as the basis for taxation purposes. For insurance of immovable property, the location of the immovable property would serve as the basis for taxation purposes.

For the Insurance Agent, the location of the agent, re-insurance-imported there will be the location of the recipient insurance company. For re-insurance, the local location of the office/branch providing the reinsurance service will be used for taxation purposes.

For franchise imported services, the location of the franchise would be used for taxation purposes. For local franchise, the location of the Franchise/Sub-Franchise will be used for imposition of GST.

For transportation of goods other than petroleum services provided by companies, a 50% tax will be imposed on basis of origin and 50% on the basis of destination. On transportation of goods other than petroleum services provided by non-companies, the location of the booking office will be used for taxation purposes. On transportation of goods through pipeline or conduit and transmission through the electrical grid, there will be a 50 percent tax on basis of origin and 50 percent on the basis of destinations.

The sources said that Balochistan and Khyber Pakhtunkhwa requested that data on TV advertisements may be shared by the Governments of Punjab and Sindh with both the Governments of Balochistan and Khyber Pakhtunkhwa. It was also decided that the governments of Punjab and Sindh will share the requested data. It was also proposed that if the National Tax Council approves the framework for Place of Supply Rules, it would have no bearing on any ongoing litigation.

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PUBLIC COMPLAINTS, TAXPAYERS' CASES: FTO CONCERNED AT FBR'S ATTITUDE

ISLAMABAD: Federal Tax Ombudsman (FTO) has expressed grave concern over the cold blooded attitude of the Federal Board of Revenue (FBR) while handling public complaints and hardship cases of taxpayers. According to an order of the FTO issued on Tuesday, Tax Ombudsman has directed FBR to facilitate the employees of the school and get the particulars corrected in the CPR.

Briefly, the complainant was a Principal of Workers Welfare Higher Secondary School for Girls, Multan (the school). An amount of Rs69,885 was deducted from the salary of School employees under Section 149 of the Income Tax Ordinance, 2001 (the Ordinance) for the month of August, 2020 and deposited in the Government treasury. Inadvertently, tax period was mentioned as 2019 instead of 2020.

The principal applied for correction to RTQ, and this request was forwarded to RTO, Islamabad which has been rejected by RTO, Islamabad. Therefore complainant took up matter with Federal Tax Ombudsman. The complaint was referred to secretary revenue division for comments, The, RTO, Islamabad instead of facilitating the complainant has forwarded comments of Islamabad stating that Complainant, Principal Workers Welfare Higher Secondary School for Girls Multan is not an affectee/party in the CPR, therefore, not entitled to apply for said correction.

Prima facie, the complaint filed is without any substance which may be rejected. However, FTO has observed that the contention of the department CPR Coordinator-IR, RTO, Islamabad was incorrect that the principal being the complainant was not a direct party therefore not entitled for applying correction of particulars in CPR.

The principal being incharge of the institution was fully justified to safeguard the interest of employees of her school who could not take credit of tax deducted because of wrong mentioning of tax year in the CPR. Moreover, it was a fact that organizational FTNs were used by all sub-offices of the given organization for tax withholding purposes.

Interestingly RTO Multan raised no objection while taxes were deducted and deposited by the complainant, as Principal by using the same FTN. But when the same person applied for a harmless correction neither RTO Multan was ready to shoulder its responsibility nor the central CPR office at Islamabad is attentive to the genuine grievances of the complainant.

This attitude reflects the cold blooded indifference of state functionaries while handling public complaints. If the Circular No.1 (2)-SS(BDT)18-CPR/280845-R dated 30.12.2019 fails to respond to a genuine problem, it must be compassionately reviewed. It was therefore a case of clear hardship having no revenue implication and yet the Department was denying to facilitate the Complainant on the strength of Circular No.1(2)-SS(BDT)18-CPR/280845-R.

Accordingly, Tax ombudsman has directed FBR into the matter and get the particulars corrected in the CPR enabling the Employees of the School to take credit of tax already deducted in the Year 2020 and report compliance within 30 days.

TAXATION OFFICERS, FOREIGN FIRMS AND AGENTS: AVOIDANCE OF DOUBLE TAXATION TREATIES BONE OF CONTENTION

LAHORE: Avoidance of double taxation treaties between Pakistan and foreign countries has a permanent bone of contention between the taxation officers and foreign companies as well as their agents in the country, said sources.

The taxation officers waste no time in issuing notices wherever they find a taxpayer has failed to deduct withholding tax at the time of making payments to their foreign counterparts, they added. Similarly, the department does not entertain the applications by the taxpayers seeking exemption from deduction of withholding tax in respect of the consultancy fee paid by it to foreign companies.

According to the sources, the taxation officers pursue foreign companies and their agents on the plea that the foreign enterprises carry on their businesses in Pakistan through a permanent establishment in the country. Therefore, they are not allowed sending profits earned by them in Pakistan without deducting withholding tax.

The foreign entities, on the other hand, contest their case on the stance that they are exempted from tax, therefore, they are under no obligation to withhold tax on royalties because of the avoidance of double taxation treaty and having no permanent establishment in Pakistan. A self-seeking interpretation of the treaty on the two sides leads to legal controversies, ending up on the adjudication at the higher appellate forums every now and then.

In most of the cases, said sources, it becomes a Herculean task for the taxation officers to prove the fact of permanent establishment of a foreign enterprise but still they remain adamant to press upon their stance until the highest appellate forum decided the matter against the department. However, in some other cases, sources added, the foreign companies mix up payments against consultancy services with the profits earned by them in Pakistan and take a refuge under the avoidance of double taxation treaty. They take cover of the Article 7 of the treaty which deals with the business and provided that the business profits earned by an entity of a contracting state shall be taxable in the state to which the company belongs unless the enterprise carries on business in other contracting state through a permanent establishment situated therein.

However, their reliance on the said Article of the treaty fails to hold ground when they admit before the adjudication forum that the tax being demanded from them is in respect of the consultancy services and not on any business profits. Article 12.2 of the treaty provided that fee for consultancy service is to be taxed in the contracting state in which they arise and in accordance with the laws of that state.

It may be noted that Pakistan tax law, in order to attract capital and encourage investment for the development of Pakistan's economy and natural resources, offers an incentive for establishment of approved new enterprises. Pakistan accords certain tax exemptions as to profits of such enterprises and also as to dividends paid out of such profits. More specifically, under the income tax law of Pakistan a business qualifying as a new enterprise may obtain tax exemption for 5 year period on profits up to 5 percent of invested capital, and dividends paid from such profits may be tax exempt.

FBR CANCELS TRANSFER OF FOUR CUSTOMS OFFICIALS

ISLAMABAD: The Federal Board of Revenue (FBR) has withdrawn notification on the transfers and postings of four senior customs officials including the director general, Directorate General of Intelligence and Investigation.

The FBR issued a notification, on Tuesday, to withdraw the earlier notification issued on March 27 (Monday). The new notification said that the transfer/ posting order made vide board's notification No0779-C-I/2023 dated 27.03.2023, is hereby cancelled ab-initio. Resultantly, all the said four senior customs officials would continue to work on their previous positions. Under the earlier notification, Faiz Ahmad director general, Directorate General of Intelligence and Investigation, Federal Board of Revenue (FBR), was given a new assignment as director general, Directorate General of Intellectual Property Rights (Enforcement), Islamabad.

Syed Shakeel Shah (Pakistan Customs Service/ BS-20 director general, (OPS) Directorate General of Reforms and Automation (Customs), Islamabad was given a new assignment as Director General, (OPS) Directorate General of Intelligence and Investigation, FBR, Islamabad.

Muhammad Sadiq (Pakistan Customs Service/ BS-21) director general, Directorate General of IPR (Enforcement), Islamabad was transferred and posted as Deputy Director General, Directorate General of National Nuclear Detection Architecture (NNDA), Islamabad.

Muhammad Junaid Jalil Khan (Pakistan Customs Service/ BS-21) deputy director general, Directorate General of National Nuclear Detection Architecture (NNDA), Islamabad was given a new assignment as Director General, Directorate General of Reforms and Automation (Customs) Islamabad.