

CENTRE-PROVINCES DECLARATION: POWER TRANSMISSION WILL BE TREATED AS 'SERVICE' FROM JULY 1

ISLAMABAD: The federal government and provinces have declared that the transmission of electricity would be treated as a service from July 1, 2023, for which the Sales Tax Act would be amended through the next Finance Bill. Sources told *Business Recorder* here on Wednesday that the decision has been taken during the 6th meeting of the National Tax Council chaired by Federal Minister for Finance and Revenue Senator Mohammad Ishaq Dar.

The consensus has been developed that the power transmission has been declared as a service. The NTC decided with the consensus that the Place of Provision of Service Rules will take effect from 1st May 2023 after approval by the respective provincial cabinets. However, the exclusion of electric power transmission from the list of goods by the FBR, for which the Sales Tax Act is required to be amended through the Finance Bill, will take effect from 1st July 2023.

Sources explained that electricity is "good" under international classifications, but the supply of electricity is done through transmission which is a service. For example, independent power producers (IPPs) supply electricity through the National Transmission and Dispatch Company (NTDC). The next Finance Bill will amend the said section of the Sales Tax Act to exclude the transmission of electricity from the list of goods. The FBR has wrongly defined under section 2 (clause 12) that the "goods" included production, transmission and distribution of electricity.

Sources added that as per the decision of the NTC on Wednesday, the transmission of electricity through electrical grids would be excluded from the purview of the goods under the Sales Tax and will be treated as a service.

Minister of State for Finance and Revenue Dr Aisha Ghouse Pasha, Engr Zamrak Khan Achakzai, Finance Minister Balochistan, SM Ahsen Tanveer, Minister for Industries Punjab, Himayatullah Khan, Adviser to the CM KP on Finance, SAPM on Revenue Tariq Mahmood Pasha, Special Secretary Finance, Chairman FBR, provincial finance secretaries and other senior officers from the Finance Division and the FBR attended the meeting.

The meeting considered and approved the recommendations of the Executive Committee of the NTC dated 28.03.2023, regarding the draft Place of Provision of Service Rules, which is a major milestone towards GST harmonisation across the country. The approval will help achieve the prior actions for the World Bank-funded RISE programme. In conclusion, Finance Minister Senator Ishaq Dar appreciated the stakeholders for building consensus and for the settlement of the harmonisation of GST in the country.

R 6-4-2023

RULES TO HARMONISE GST ON SERVICES APPROVED

ISLAMABAD: In a significant development, the National Tax Council (NTC) on Wednesday approved the much-awaited Place of Provision of Service Rules (PPSRs), a step towards harmonising general sales tax on services across the country and ultimately easing the doing of businesses.

Harmonising GST on services is a condition of the International Monetary Fund (IMF) to unlock funding to Pakistan stalled since December despite implementing several tough policy decisions, including additional tax measures. After approval of the respective provincial cabinets, the PPSRs will come into effect from May 1. The Sindh Revenue Board (SRB) suggested implementing the rules from July 1, while the other three provincial revenue authorities wanted the implementation from mid-April.

The government is in a hurry to get loans from multilateral lenders to shore up its falling foreign exchange reserves and the early implementation of the World Bank project could give some breathing space to Pakistan. As a result, the early implementation of the rules will pave the way for the release of a \$1 billion programme loan under the Resilient Institutions for Sustainable Economy (RISE) programme of the World Bank. The programme loan is vital for Pakistan keeping in view the country's balance-of-payments issue and a considerable delay in getting a \$1.1bn tranche from the IMF.

The service rules are also a step forward towards facilitating ease of doing business. An official announcement of the finance ministry said the NTC approved the recommendations of its executive committee regarding draft PPSRs. The approval will help achieve the prior actions for the World Bank-funded programme.

The meeting approved the exclusion of electric power transmission from the list of Federal Board of Revenue (FBR) goods and it will now be treated as a service. It was decided that it would be implemented from July 1 following the amendment to the Sales Tax Act through the Finance Bill in the upcoming budget.

The SRB has already proposed rules for the provision of services relating to electric power transmission. Other provincial revenue authorities will also adopt similar rules.

All provinces will have their own set of rules subject to the condition that there should be no material differences in these rules, as that is the aim of the entire harmonisation exercise. As per agreement among provinces and the FBR, the advertising service and advertisement agents will be charged sales tax as per an agreed plan. GST on TV and radio ads will be based on the location of the beaming stations.

In the case of still media, GST will apply to the location of hoarding sites, while in the case of advertising agents, the tax will be collected based on the location of the agent's office or branch.

In the case of different insurance services — life and health insurance, insurance of immovable property, insurance agent, re-insurance agent, re-insurance imported and re-insurance local — the GST on services will be based on the location of the office or branches of the insurance company providing services.

The provinces agreed that GST would apply based on the location of the franchise. They also agreed on a formula that half of GST will go to the province of origin on transportation of goods other than petroleum services provided by companies while the remaining half will go to the destination province.

In the case of non-companies, the GST will be based on the location of the booking office on transportation of goods other than petroleum services. Half of the GST will be on the origin of transportation of goods through pipeline or conduit and transmission through the electrical grid, while 50pc tax will be applied to the destination province.

Dawn 6-4-2023

FBR FREEZES BANK ACCOUNT OF BUSINESS TYCOON FOR CVT RECOVERY

The Federal Board of Revenue (FBR) has frozen the bank account of Abdul Aziz Memon, Chairman of the Kings Group of Companies and Trustee of The Rotary Foundation, for defaulting on capital value tax (CVT) amounting to around Rs14 million. Memon, who is also chairman of Pakistan National Polio Plus Committee, as a taxpayer defaulted the said amount for having assets abroad.

Banking sources Wednesday confirmed that taxmen from a Karachi office had attached the bank account for the recovery. Aziz Memon has joined the CVT defaulters' league. Prior to this the tax office in Karachi had attached bank accounts of 50 renowned businessmen.

The information was not confirmed by the officials at the Large Taxpayers Office (LTO) Karachi. But they stated that the FBR had launched a relentless drive against defaulters of the CVT. The revenue body has recovered CVT around Rs5 billion through harsh measures across the country since January 2023. They said that further such action were underway. Overall, the FBR also has a tough stance in recovery of amount in cases of CVT, super tax and deemed income during the last quarter of the current fiscal year.

The CVT was imposed through Finance Act, 2022 at one per cent of the value on the foreign assets of a resident individual where the value of such assets on the last day of the tax year in aggregate exceeds Rs100 million. A senior officer at the FBR said that the CVT has been imposed on super-rich individuals. This is a direct tax that cannot be passed onto the poor, and it has to be paid by the super-rich themselves.

The official said that only 5,000 persons in the country are liable to pay this tax but interestingly around 1,200 individuals have approached courts to question constitutionality of the law. On the flip side, recently the government enhanced the sales tax rate from 17 per cent to 18 per cent, which is direct burden on the masses. But not a single public interest petition is filed. Recently, the Managing Director of IMF has criticized this attitude of Pakistani society. There is a general perception that the law implementation mechanism is biased in favor of the elite.

PR 5-4-2023

SHC DECIDES ITRA FILED BY COMMISSIONER INCOME TAX IN FAVOR OF RESPONDENT STATE LIFE INSURANCE

KARACHI: An Income Tax Appellate bench of High Court of Sindh decided a Income Tax Reference Application bearing Nos 973 to 977 of 2008, filed by Commissioner (Legal Division) against State Life Insurance Corporation of Pakistan and others. The court passed the following order in detail:

Text of detailed judgment: The four ITRAs arised out of a a common order of Income Tax Appellate Tribunal (ITAT) dated 28.04.2008 passed in ITA No.545/KB of 2003, which gave rise to two questions as under:- A) Whether on the facts and circumstances of the case learned ITAT was justified in directing not to charge tax on dividend over and above minimum tax at 0.5% on balance turnover of the assessed? B) Whether on the facts and circumstances of the case the learned ITAT was justified in holding that it was a legal requirement to issue a notice under section 65 in the case? 2. The assessment of the government owned corporation established under Life Insurance Nationalization Order 1972 was amended/finalized under section 62 of Income Tax Ordinance, 1979 (1979 Ordinance) by a taxation officer as against declared income, from gross premium including first year premium, single premium, group premium, consideration for ordinary annuities granted (less re-insurance), profit on sale of investment, profit on disposal of fixed assets, miscellaneous income, prior years adjustment, gross rent, gross interest and dividend. 2 Since tax on assessed income was less than 0.5% of the declared turnover, therefore, maximum tax under section 80(d) of 1979 Ordinance was charged vide order under section 156 of the ibid Ordinance which was upheld by ITAT. While giving appeal effect to ITAT's order, assessment was reframed under section 62/135 by charging minimum tax at 0.5% on turnover and the dividend was taxed separately at 5%. 3. Precise facts are that the assesses being aggrieved of the order of the taxation officer on such exclusion of dividend, to be dealt with separately, filed appeal before the Commissioner Income Tax (Appeals) Karachi. Since the assessment orders were in respect of different tax years all the appeals were heard and a consolidated order was passed on 21.01.2003 whereby tax charged on dividend separately was deleted. Being dissatisfied with the order of Commissioner Income Tax (Appeals), the department filed Second Appeal before ITAT, which again cumulatively decided the appeals on 28.04.2008, impugned in these references, confirming the order of the CIT (Appeals), with the reiteration that it was a lawful order and before such amendment, it required notice under section 65 to be served where such amendment is sought, as in the instance cases where dividend was being treated separately for tax purposes. 4. The assessment order, insofar as it relates to dividend is concerned, is highlighted in typed page 4 of the assessment order passed by the taxation officer, which is as under:- "Assesses has declared gross dividend income of Rs.102.135 (M) which is includable as business income in the light of the aforesated judgment of the Supreme Court but as the learned honourable High Court of Sindh and later on ITAT (in case of M/s Pakistan Refinery Limited) has held that dividend is to be excluded from business turnover therefore, dividend is being separately taxed as per rate applicable as provided in the Ist Schedule to the Income Tax Ord. 1979." The observation of taxation officer is apparently contemptuous in the sense that although it is stated to be "includable" in the business income in the light of judgment of Hon'ble Supreme Court, but taxation officer has relied upon some judgments of High Court and ITAT. This part of the order was then taken into consideration by the Commissioner of Income Tax (Appeals) as under:- "But the learned Taxation Officer-II, Audit Division, Large Taxpayers Unit, Karachi, has taxed some income including dividend income, which was not taxed in the original assessment and has increased income from some of the sources as explained by the assessee in his written arguments above. The learned Taxation Officer-II could not do but without first issuing notice under section 65 of the Income Tax Ordinance, 1979, if he felt that some of the source of income or quantum of income from some of the sources were missing, which require the reopening of the assessment u/s 65 of the Income Tax Ordinance, 1979, for which he was legally authorized/empowered as stated by the Hon'ble High Court in their judgment cited above. Since, the learned Taxation Officer-II, Audit Division, Large Taxpayers Unit, Karachi does not find any point for allowing relief to the assessee as directed by the learned Commissioner of Income Tax (Appeals) and the learned Income Tax Appellate Tribunal, because the assessment is in accordance with the decisions of the learned Income Tax Appellate Tribunal, he is directed to repeat the same figure as is given in the original assessment order. The increase in various figures as compared to the original assessment and taxation of new item, which were not taxed in the original assessment for example dividend income, are therefore deleted and all the original assessment orders for all the five years after giving appeal effect are restored." 6. This question was lastly dealt with by Income Tax Appellate Tribunal (ITAT) when a consolidated order in all the appeals preferred by the department was passed. The Appellate Tribunal observed as under:- "We have examined the case and consulted the 4th Schedule of Income Tax Ordinance, 1979, which lays the prescribed rules for computation of profit and gains of Insurance Business in Pakistan. Perusal of the judgment quoted by the learned D.R and A.R specially the judgment 1997 PTD 1693 makes its abundantly clear that in the case of Life Insurance the income of the Life Insurance Company is to be taken as one unit income or as single basket income. This is further given strength by the decision of the Supreme Court reported as 1997 PTD 1693 (S.C.Pak) which 4 apart from many other issues discussed and decided considers income of the life insurance business as a single basket income. Furthermore, as rightly decided learned CIT (A) no notice U/s 65 was issued in the case which was a legal requirement. We find no fault with the order of the learned CIT (A) which is confirmed." 7. The proposed questions could not have been framed and these references could not have been filed unless the case of E.F.U. General Insurance Co. Limited 1 could be distinguished in terms of circumstances of the case, in which attempt, applicants failed. Since the questions are covered by the said judgment of the Hon'ble Supreme Court, which has not been distinguished by the learned counsel appearing for applicant, there cannot be a second opinion for the proposed questions in this regard. Paragraph 20 of the above referred judgment is as under:- "20. In the circumstances, we are of the view that assessments of the appellants which had already been made inter alia extending benefit of lower tax on dividends on the basis of the rule laid down in the American Life Insurance Company case could not be reopened under section 65(1) of the Income Tax Ordinance, 1979, and, though a binding judgment of a superior Court of the country is "definite information" in terms of subsection (2) of section 65, neither the judgment in the case of Adamjee Insurance Company nor by this Court in the case of Central Insurance Company overruled or upset the judgment in American Life Insurance Company case. We are also of the opinion that the view taken in the case of American Life Insurance Company is correct and it equally applied to income from general insurance business and, as such, case of the appellants reopened under section 66-A and

even fresh assessments made by the Income Tax Officers or by appellate authorities depriving the appellants of the benefit in tax under the First Schedule to the Ordinance in respect of the dividend income are also liable to be set aside. We also find that the High Court erred in treating the case of the appellants as cases for exemption from tax whereas these cases related to the benefit of lower rate of tax available to the assesses in relation to dividend income under the First Schedule to the Income Tax Ordinance. The High Court further erred in relying on the observations made by the earlier judgment of the High Court in the case of Adamjee Insurance Company which, as observed earlier, related to different provisions. It may be observed here that no judgment has been referred which takes a different view that has been taken by the High Court in the case of American Life Insurance Company.” 1 1997 PTD 1693 (E.F.U. General Insurance Co. Limited v. The ITO, Circle A-1) 5 8. Section 65 of 1979 Ordinance, which is in relation to additional assessment, provides that no proceedings thereunder i.e. subsection (1) of Section 65 shall be initiated unless definite information has come into the possession of (Deputy Commissioner) and he has obtained a previous approval of the Inspecting (Additional Commissioner) of the Income Tax in writing to do so. Subsection (3) of Section 65 further reiterated that notice under subsection (1) in respect of any income year may be issued within ten years of assessment year in which total income of the said year was first assessable. The proviso however clarified that where the said notice is issued on or after 01.07.1987 this subsection shall have effect as if for the words “ten years” the word “five years” were substituted. 9. Since the applicant is unable to distinguish the ibid judgment of Hon’ble Supreme Court on the identical point and question of law, no two opinions or view could be formed. The questions proposed and framed are thus answered in affirmative i.e. against the applicant and in favour of respondents. The Reference Applications as such stand disposed of. 10. A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Income Tax Appellate Tribunal (Pakistan) Karachi in terms of Section 133(5) of Income Tax Ordinance, 2001. 11. Above are reasons of our short order dated 28.03.2023”.

CN 5-4-2023

LIVE ANIMALS, PRODUCTS: ECC APPROVES AMENDMENTS TO IMPORT POLICY

ISLAMABAD: The Economic Coordination Committee (ECC) of the Cabinet has approved amendments to import policy with regard to the import of live animals and animal products.

The ECC meeting presided over by Finance Minister Ishaq Dar considered and approved a summary moved by the Ministry of Commerce regarding proposed amendments in the relevant clauses of the Import Policy Order 2022 as it was informed that the World Organization of Animal Health (WOAH) on animals (Cattle) revised conditions/guidelines by the World Organization of Animal Health (WOAH) on animals (Cattle) trade.

The ministry added that the import of live animals and animals’ products is allowed as per the requirements and conditions contained in IPO-2022 and these regulatory requirements have been made part of IPO on the recommendations of the Ministry of National Food Security and Research (MNFSR) in line with WOA and the national law on animal quarantine.

The meeting was further informed that MNFSR has suggested to revise the text of paragraphs of IPO 2022 because the conditions/guidelines with regard to trade in animals (cattle) have been revised by WOA in its latest terrestrial animal health code 2022 and these proposed amendments are in line with the international regulations and in line with the proposed amendments, a draft SRO has been prepared. In view of the foregoing, approval of the ECC is solicited to amend IPO as proposed by MNFSR and drawn in the form of draft SRO.

The ECC approved a Technical Supplementary Grant of Rs299.997 million in favour of the Ministry of Housing and Works for the repair and maintenance of public buildings. The ECC also approved a supplementary grant of Rs87.164 million in favour of the Intelligence Bureau for payment of taxes and duties.

The ECC after discussion deferred a summary of the Ministry of Commerce regarding amendment in IPO-2022 pertaining to used auto lube oil and a summary of the Ministry of Information Technology and Telecommunication, seeking approval of the NTC’s budget for the financial years 2021-22 and 2022-23.

The meeting was attended by Federal Minister for Power KhurramDastgir Khan, Federal Minister for Industries and Production Syed Murtaza Mahmud, Federal Minister for Commerce Syed Naveed Qamar, Shahid Khaqan Abbasi MNA/Ex-PM, Minister of State for Finance and Revenue Dr Aisha Ghous Pasha, Minister of State for Petroleum Musadik Masood Malik, SAPM on Revenue Tariq Mehmood Pasha, SAPM on Government Effectiveness Dr Muhammad Jehanzeb Khan, Coordinator to Prime Minister on Commerce and Industry RanaIhsanAfzal, federal secretaries and other senior officers attended the meeting.

R 6-4-2023

ECC DEFERS DECISION ON IMPORT OF BANNED USED AUTO OIL LUBE

ISLAMABAD: The Economic Coordination Committee (ECC) of the Cabinet deferred the decision on import of banned used auto oil lube.

Finance minister Ishaq Dar presided over the meeting of the ECC. Sources said that as defined under Basel Convention the used auto oil contain hazardous wastes which are banned for trade worldwide.

The government on the recommendation of climate change ministry imposed a ban in IPO 2013. Subsequently, on the petition of Amir Oil Pvt Ltd, Lahore High Court directed the commerce ministry to treat the representation from the petitioner and decide the matter in accordance with law within 30 days.

The Ministry of Commerce consulted climate change ministry to give justification on the ban of used auto lube oil and determine the nature of the oil imported by Aamir Oil Pvt Ltd as hazardous or otherwise. The oil sample was sent to Hydrocarbon Development Institute of Pakistan (HDIP) and Pakistan Council of Scientific and Industrial Research (PCSIR) but none of them could determine its hazardous nature either due to non-availability of requisite technical expertise or the non-existence of the parameter to declare oil as hazardous.

However, the point was raised that Basel Convention secretariat Geneva did not address the issue of auto lube oil and instead conveyed general policy provision which stated that water oils are considered by parties as hazardous wastes if they are unfit for their originally intended use. The importer claimed that the Basel Convention restricts the trade of those used oil which are not suitable after their intended use, but used auto oil lube remains as good for use in auto industry and there are no hazardous impurities.

Sources said that the ministry of commerce verified import/export data and revealed that the same is being traded worldwide. The reclamation process, in essence, is a recycling process and ministry of climate change used auto oil for recycling purposes.

According to finance ministry, the ECC after discussion deferred a summary of Ministry of Commerce regarding Amendment in IPO-2022 pertaining to used auto lube oil.

Other discussions

In another summary, the Ministry of Commerce submitted a summary on amendments in the Import Policy Order-2022 with regards to import of live animals and animal products in line with the revised conditions/guidelines by the World Organization of Animal Health (WOAH) on the trade of cattle. The ECC after discussion approved the proposed amendments in the relevant clauses of IPO-2022.

The ECC approved Technical Supplementary Grant of Rs. 300 million in favour of the Ministry of Housing and Works for repair and maintenance of public buildings. The ECC also approved a supplementary grant of Rs 87 million in favour of Intelligence Bureau for payment of taxes and duties.

The ECC sent a summary of the Ministry of Information Technology and Telecommunication, seeking approval of NTC's budget for financial year 2021-22 and 2022-23.

PTD 5-4-2023

36 FBR OFFICIALS TRANSFERRED, POSTED

ISLAMABAD: The Federal Board of Revenue (FBR) has transferred and posted 36 tax officials of the Inland Revenue Service (BS-19 to -20) including commissioners with immediate effect.

In this regard, the FBR issued a notification on Wednesday, which revealed that transfers and postings of commissioners IR had taken place at Large Taxpayers Offices, Medium Taxpayers Offices, Corporate Tax Offices and Regional Tax Offices.

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