

SUPPLY OF THAR COAL TO INDUSTRY: TAX AMENDMENTS ON THE CARDS

ISLAMABAD: Prime Minister Office (PMO) has directed Federal Board of Revenue (FBR) to alter/ amend Income Tax Ordinance in the next budget, aimed to start supply of Thar coal to local industry, well informed sources told Business Recorder. These directions were issued at a meeting held in the PM's Office to resolve issues of Sindh Engro Coal Mining Company (SECMC) under the chair of Mohammad Jehanzeb Khan, SAPM on Effective Governance.

National Transmission and Dispatch Company (NTDC) highlighted that progress on transmission lines is on track and already attained 77 percent completion. It highlighted the issue of Right of Way in Tando Allahyar district of Sindh. NTDC officials maintained that if the issue of Right of Way is not resolved it may delay the whole project.

Federal Board of Revenue (FBR) apprised that SECMC may not provide excess coal to the industry owing to provision in the Income Tax Ordinance (Section 65) wherein it is stipulated that the said credit shall only be availed if the coal is supplied exclusively for power generation. Representative of FBR observed that the existing provision is restrictive and can be reviewed to harness the potential of Thar coal.

Secretary Railways noted that CDWP, in its meeting held on December 22, 2022 proposed cost sharing of "Thar Coal Rail Connectivity" on 50-50 basis between Federal Government and Government of Sindh. Since then, coal demand has been firmed up but Government of Sindh seems to be more interested in revenue sharing model instead of provision of loan. After detailed discussion on the issues and considering viewpoints of all the participants, the meeting decided that NTDC will complete 100 per cent work on transmission line by the end of April 2023. NTDC will also submit weekly report to Prime Minister Office.

The meeting decided that strategic roadmap team of power sector will add milestones to the PM's stocktaking and regular monitoring. The meeting also decided that Chief Secretary Sindh will resolve issue of Right of Way faced by NTDC in district Tando Allahyar on priority.

FBR is to consider suitable amendments in Section 65(F) of the ITO in the next Finance Bill so that local industry may reap benefits of Thar coal. State Bank of Pakistan in coordination with commercial banks was tasked to resolve the issue of pending LCs of SECMC's import of coal-related machinery. Secretary Planning is to convene a meeting on rail connectivity of Thar coal in line with the firmed up demand and develop financing modalities of Thar coal rail connectivity project of Pakistan Railways in line with decision of CDWP of December 22, 2022 wherein it was decided to share cost between Federal Government and Government of Sindh on 50:50 basis.

R 17-4-2023

GST HARMONIZATION: FBR, PROVINCES NOTIFY UNIFORM 'PLACE OF PROVISION OF SERVICES RULES-2023'

ISLAMABAD: In a major breakthrough between the Federation and provinces on harmonisation of sales tax, the Federal Board of Revenue (FBR) and all provinces Saturday notified uniform "Place of Provision of Services Rules-2023".

The rules of the federal government and provinces will be applicable from May 1, 2023 in relation to determination of place of provision of taxable services. However, rules pertaining to the Electric Power Transmission Lines Services would be applicable from July 1, 2023.

In this regard, the FBR and the provincial revenue authorities and boards have finally issued their respective rules to explain place of provision of services relating to the advertisement, advertising agents, insurance and reinsurance, insurance agents and insurance brokers, franchise services, intellectual property and licensing services and place of provision of services relating to transportation of goods.

The FBR has issued SRO 494(I)/2023 to notify Islamabad Capital Territory Place of Provision of Services Rules-2023.

The Sindh Revenue Board (SRB) has issued Sindh Place of Provision of Services Rules-2023.

The Punjab Revenue Authority (PRA) has issued Punjab Place of Provision of Services Rules, 2023.

The Khyber-Pakhtunkhwa Revenue Authority (KPRA) has issued Khyber-Pakhtunkhwa Place of Provision of Services Rules, 2023.

The Balochistan Revenue Authority (BRA) has notified Balochistan Place of Provision of Services Rules, 2023.

The Place of Provision of Service Rules issued by the FBR, as well as, provinces is a major milestone towards GST harmonisation across the country.

A comparison of Sindh Place of Provision of Services Rules-2023, Punjab Place of Provision of Services Rules, 2023, Khyber Pakhtunkhwa Place of Provision of Services Rules, 2023 and Balochistan Place of Provision of Services Rules, 2023 revealed uniformity in the application of sales tax on specified services.

In case a service transaction is determined to be provided in more than one province in accordance with these rules, the service provider shall claim an 'attributable' input tax in the same proportion as is declared in relation to taxable value of the service, subject to other restrictions and limitation as provided in the Act and the rules made there under.

Under the uniform rules, 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. 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.

Provincial Rules 2023 revealed that in case of electric power transmission lines services, the place of provision of service shall be the place of the origin and the destination of transmission in a manner that the amount of tax involved is shared equally by the provinces in which the transmission originated and in which such transmission terminated:

Provided that where the electric power transmission lines service originates and terminates in one and the same province the place of provision of service shall be the province itself.

Provided further that where the electric power transmission lines service originates in a province where the tax is levied but terminates in a province or area where such tax is not levied, the place of provision of service shall be the province where the transmission originates, the rules added.

Where the electric power transmission lines service originates in a province where the tax is not levied but terminates in a province or area where such tax is levied, the place of provision of service shall be the province where the transmission lines terminates.

Where the rate of tax leviable in the province in which the transmission lines service originated is different than the rate of tax leviable in the province in which such transmission lines service terminated, the invoice shall clearly indicate the amount of tax payable to the respective provinces as determined on the basis of the respective rate(s) of tax on 50 per cent of the value of that inter-province transmission lines service.

R 16-4-2023

TRANSPORTATION SERVICES OR CARRIAGE OF GOODS THRU ROADS: PROVINCES NOTIFY FORMULA FOR SALES TAX

ISLAMABAD: All four provinces have notified that the amount of sales tax would be equally shared by those provinces in which the transportation services or carriage of goods through roads would originate and terminate.

According to the uniform rules issued by the provinces on "Place of provision of services relating to transportation of goods", in case of services of transportation or carriage of goods by road or services in relation to transport of goods other than water, through pipeline, conduit or any other medium, the place of provision of service shall be the place of the origin and the destination of such service. This would be done in a manner that the amount of tax involved is shared equally by the provinces in which the transportation originated and in which such transportation terminated.

All four provinces have issued separate notifications on the rules pertaining to the "Place of provision of services relating to transportation of goods".

The rules revealed that where transportation or carriage of goods by road or services in relation to transport of goods other than water, through pipeline, conduit or any other medium originates and terminates in one and the same province the place of provision of service shall be the province itself.

The rules further revealed that where the transportation or carriage of goods by road or services in relation to transport of goods other than water, through pipeline, conduit or any other medium originates in a Province where the tax is levied but terminates in a Province or area where such tax is not levied, the place of provision of service shall be the Province where the transportation originates. Provided further that where the transportation or carriage of goods by road or services in relation to transport of goods other than water, through pipeline, conduit or any other medium originates in a Province where the tax is not levied but terminates in a Province or area where such tax is levied, the place of provision of service shall be the Province where the transportation terminates.

In case of the services, provided or rendered by persons, whether a company or otherwise, in relation to road transportation of petroleum oils, the provisions of the relevant provincial (Transportation or Carriage of Petroleum Oils through Oil Tankers) Rules shall apply notwithstanding the provisions of these rules, provincial rules said. Provided further that where the rate of tax leviable in the Province in which the transportation originated is different than the rate of tax leviable in the Province in which such transportation terminated, the invoice shall clearly indicate the amount of tax payable to the respective Provinces as determined on the basis of the respective rates of tax on 50 per cent of the value of that inter-province transportation service.

R 17-4-2023

PRESIDENT ALVI ORDERS GENUINE TAX REFUND CANNOT BE REFUSED AFTER LATE FILING CLAIM

President of Pakistan, Dr. Arif Alvi, Sunday ordered that a genuine tax refund cannot be refused even after late filing of a claim. The President made this decision while upholding the Federal Tax Ombudsman's (FTO) directive to the Federal Board of Revenue (FBR) to dispose of a private food company's refund application, even though it was filed five to eight years late.

The company had requested condonation in delay under the Sales Tax Act, 1990, for filing refund claims relating to the period of 2012 to 2016, as the sales tax amount of PKR 88.5 million was not claimed or adjusted in their previous sales tax returns due to technical issues at the company.

The President cited a Supreme Court judgment (PLD 1998 SC 64) that stated that a genuine refund could not be refused, even if the refund application was filed late. Dr. Alvi pointed out that the Constitution's fundamental rights, as enshrined in Article 24 (1), postulate that no person should be compulsorily deprived of their property, save in accordance with law.

The President reiterated that it was the duty of the state to return what had been taken erroneously or wrongly and that a democratic government could not take a plea of limitation to deny what was due to a citizen. Dr. Alvi further referred to the Supreme Court's decision in the M/s Pfizer Laboratories Ltd. Vs Federation of Pakistan case, which held that if one party, whether of fact or law, paid some money to another party (which included a Government department) that was not due by law, contract, or otherwise, it must be repaid.

The President noted that where some money was received by the government not lawfully due, the plea of limitation by its departments was one which the court always looked upon with disfavour as it was violative of the principles of morality and justice.

The President concluded by stating that every government, which claimed to have ethical and moral values, must do what was fair and just to the citizens regardless of legal technicalities. He further reiterated that the fact that the amount of tax for which the refund was claimed was voluntarily paid did not preclude the right to claim the refund if it was not lawfully payable. The President rejected FBR's representation, citing the commissioners of two different zones in the company's matters of identical nature passing orders contrary to each other.

PR 16-4-2023

FTO'S JURISDICTION: IHC SETS ASIDE PRESIDENT'S ORDER IN CASE OF DISCIPLINARY PROCEEDINGS AGAINST THE FEDERAL BOARD OF REVENUE'S (FBR) OFFICIALS

ISLAMABAD: The Islamabad High Court (IHC) has ruled that the President of Pakistan has misapplied the law to set-aside the order of the Federal Tax Ombudsman (FTO), who has jurisdiction to recommend criminal/ disciplinary proceedings against the Federal Board of Revenue's (FBR) officials.

The LHC recently issued a judgment against the order of the President which had set-aside the findings/ recommendations of the Federal Tax Ombudsman (FTO) in 2017. In his judgment, IHC Justice Babar Sattar set aside President's order which was issued in the past in favour of the Federal Board of Revenue (FBR). The President order was challenged by a Lahore-based taxpayer Masud Reza through tax lawyer Waheed Shahzad Butt before IHC, wherein LHC set aside President Order and ruled that FTO has jurisdiction to recommend criminal or disciplinary proceedings against FBR officials.

Petitioners' counsel Advocate Waheed Shahzad Butt argued before the IHC that the assessing officer attached the petitioner's bank accounts under section 140 of the Income Tax Ordinance 2001 without serving any tax demand under the assessment order.

The grievance of the petition emanated from the refusal of the tax department to abide by the stay order. The petitioner then filed a complaint before the FTO on the basis that officials of FBR who disregarded the stay order were liable for maladministration in terms of FTO Ordinance, 2000, who concluded that failure to implement a stay order was tantamount to maladministration under Section 2(3) (i) (b) of the FTO Ordinance.

IHC order states: "The finding of the FTO was that the failure or refusal of the relevant tax officials to honour and implement the stay order was perverse, arbitrary, unjust and oppressive. And such conduct fell within the definition of maladministration under Section 2(3) (i)(b) of the FTO Ordinance. After reaching such conclusion, the learned FTO issued recommendations to the Chief Commissioner to take suitable action against the officials responsible for failure to comply with the order of the Commissioner Appeals. Such recommendations fell within the powers vested in the learned FTO under Section 14 (6) of the FTO Ordinance. If FBR were to contend that Commissioner could feign ignorance to orders of Commissioner (Appeals), it would in effect be writing a charge sheet against itself, as that would be admission of its own malfeasance under the FBR Act, 2007. If such were the case, it would have been an additional ground of maladministration on the part of FBR and its officials as it cannot be countenanced that one arm of the FBR can claim ignorance in relation to the orders issued by another arm of the FBR.

The Commissioner Appeals falls within the hierarchy of FBR and it is not for the taxpayer to demonstrate effecting notice of orders passed by the Commissioner Appeals on the relevant officials within the hierarchy of the Commissioner Inland Revenue to seek the enforcement of such order. It is the duty of FBR to ensure that taxpayers are treated justly and fairly during the adjudication process. And it is not for FBR to deny knowledge or dodge service of any orders issued by the Commissioner Appeals and thereby deny any benefits of a stay order.

Consequently, the denial of knowledge is without merits and would constitute an independent ground for FBR, under the relevant provisions of the FBR Act, 2007, to initiate an inquiry and take disciplinary action against officials who claimed that they were unaware of the stay order. It appears that while hearing the representation against the order of the FTO, the President misapplied himself to the relevant facts & law and consequently passed an order setting aside the order of the FTO in a manner that is not sustainable in the eyes of law. The decision of the President of Pakistan is set-aside for not being in accordance with law, IHC order added.

R 17-4-2023

RS5.5BN TAX EVASION DETECTED IN STEEL SECTOR

ISLAMABAD: The Federal Tax Ombudsman (FTO) has unearthed glaring discrepancies in rules that facilitated a tax evasion of Rs5.5 billion in the steel sector and suggested ways for recovery from evaders.

The ombudsman in its findings recommended to the Federal Board of Revenue (FBR) to re-locate the jurisdiction of steel cases from the Corporate Tax Office (CTO) Lahore to Large Taxpayers Office (LTO) or Regional Tax Office (RTO) Lahore for more independent and effective recovery proceedings. Similarly, any officers/officials having any link in the past, with the cases of steel melters must not be associated or assigned the fresh jurisdiction of these cases.

FTO Legal Adviser Almas Ali Jovindah said it has also been recommended to recover the loss incurred on a priority basis through its investigation arm—Directorate General Intelligence and Investigation Inland Revenue Service. He further said that the recovery should be based on Lahore based steel sector, especially with the focus on probing all cases of exclusion certificates.

The copy of the ombudsman report recommended a feasible and conclusive way out to the FBR for affecting recoveries of evaded government revenue by way of misusing Rule 3(A) of Rule 58H of Sales Tax Special Procedure Rule 2007 introduced through SRO421 of 2014 on June 4, 2014. To facilitate the steel sector, Special Procedure Rules were introduced in 2007. According to these rules, collection of sales tax from steel melters/re-rollers/composite of melters and re-rollers having single electricity meter was charged at specified rates under Rule 58H of Sales Tax Special Procedure Rule, 2007.

The levied sales tax was collected through monthly electricity bills based on the consumption of electricity. However, subsequently, in the year 2014, Sub-Rule (3A) was inserted under Rule 58H which was in force from June 4, 2014. After this amendment, the commissioners of income tax were empowered to collect sales tax directly from the steel melters and re-rollers after according necessary adjustments in lieu of collection of sales tax at the import stage and by issuing an adjustment/exclusion certificate in this regard.

The discrepancies were earlier identified by Director General External Audit, then followed by Public Accounts Committee and then by the FTO secretariat. The issuance of exclusion certificates was a clear violation that causes revenue losses.

The discrepancies identified include the issuance of exclusion certificates against cheques/pay orders instead of payment to the treasury/national exchequer and returning of pay orders with illicit motives to registered persons after the issuance of exclusion certificates. During the investigation, it was also identified that the pay order of one party was used in favour of the sales tax number of another party and for the issuance of exclusion certificates to unregistered persons. Moreover, the use of pay orders for deposition in treasury for a later period of a registered person was also noted and no action was taken in cases of bounced cheques.

Dawn 16-4-2023

FTO DIRECTS LAHORE CUSTOMS TO RETURN \$10,000 IN CURRENCY SEIZURE CASE

Federal Tax Ombudsman (FTO) has directed Lahore Customs to return \$10,000 to a complainant in currency seizure case.

The Federal Tax Ombudsman (FTO) has directed Lahore Customs to return \$10,000 to a complainant in a currency seizure case. This decision came after a long legal battle that lasted almost seven years. The case began in 2016 when the customs officials seized \$11,700 from the complainant along with 300 Euros and 80 Pounds. The department made a seizure report and sent it to the Adjudicating Authority. The Adjudicating Authority later confiscated the seized foreign currency exceeding \$10,000. The complainant filed an appeal against the order, and the Customs Appellate Tribunal (CAT) ordered the department to release the complainant's currency. However, the department filed a reference against CAT's order in the Lahore High Court, which set aside CAT's order and remanded the case back to the CAT for a fresh decision.

The CAT again fixed the case for hearing in June 2022, and after hearing both parties, the CAT ordered the release of \$10,000 to the complainant. After the CAT's order, the complainant approached the Customs authorities for the release of the currency. However, the department informed the complainant that the currency had been stolen from the State Warehouse (Valuable), and an FIR had been lodged for misappropriation/theft. The complainant then filed a complaint with the FTO against the Collectors, Collectorate of Customs (Enforcement), Lahore, and Collectorate of Customs (AIIA), Lahore, for delay in paying/returning an amount of \$10,000 to the complainant.

The complaint was referred to the Secretary, Revenue Division, for comments, and the Collector, Collectorate of Customs (AIIA), Lahore, submitted parawise comments. The Collector submitted that the complainant failed to declare the money possessed by him at the Currency Declaration Desk. Therefore, the Customs staff recovered the currency from the complainant, and the whole of the foreign currency seized from the complainant was not confiscated solely, only the amount exceeding \$10,000 was confiscated by the Additional Collector of Customs (Adjudication), Lahore.

The Collector, Collectorate of Customs (Enforcement), Custom House, Lahore, submitted separate parawise comments, stating that the foreign currency as referred to in the subject seizure case had been stolen from the State Warehouse (Valuable). However, as soon as FIA recovered the stolen property/currency, the same would be released to the complainant in the light of CAT's order as had already been approved by the Departmental Law Committee of this Collectorate on 30.08.2022.

The FTO has directed Lahore Customs to return \$10,000 to the complainant pursuant to CAT's order dated 22.07.2022. The decision is a significant victory for the complainant, who had to run from pillar to post for almost seven years to get justice. The FTO's decision is also a reminder to the Customs authorities that they must follow the law and not harass or delay the return of seized currency or goods to the rightful owner. In conclusion, the FTO's decision to direct Lahore Customs to return the seized currency is a welcome move that will help restore confidence in the legal system. It is essential that authorities follow due process and return seized property or currency promptly to avoid causing unnecessary hardship to the rightful owner.

PR 15-4-2023

PAAPAM ASKS DAR TO EASE IMPORTS FOR AUTO/AUTO PARTS INDUSTRIES

LAHORE: The Pakistan Association of Automotive Parts & Accessories Manufacturers (PAAPAM) has sent an SOS to Federal Finance Minister Ishaq Dar, appealing to him for removal of imports of auto/auto parts industries from the 'non-essential' items' list, as the auto parts manufacturers save valuable foreign exchange to the tune of \$1.5 billion per annum through import substitution and contribute over 5 percent of the country's tax revenues.

The Chairman PAAPAM, Munir Bana, informed the Honourable Minister that its members, the auto parts manufacturers, provide direct and indirect employments to over 3 million Pakistani workers, technicians, engineers and management professionals, who face layoffs as the entire sector is on the verge of closure. PAAPAM requested that all banks may kindly be directed to open all L/Cs for imports by genuine manufacturers, as the entire industry is currently faced with permanent closure, amidst rising inflation, devaluation of our currency and record high markup rate, making it impossible to maintain operations.

In the above letter, PAAPAM Chairman observed that, unless immediate counter measures are taken to save the “mother of all industries”, a massive tragedy would unfold, as the entire auto parts industry would shut down permanently, leading to losses of millions of jobs, rollback of localization and repatriation of foreign investments by all the automotive assemblers.

“The auto industry needs support from the government and the State Bank of Pakistan through easing of restrictions on imports of CKD kits by assemblers as well as raw materials by parts makers. “This would help recovery of volumes to a certain extent and assist the industry in sustaining its operations at a breakeven level,” he added. Munir Bana argued that the entire automobile industry needs approximately US\$125 million per month to survive through breakeven capacity utilization. He said that PAAPAM is the representative of 350 Tier-I and 1,200 Tier-II auto parts manufacturers located all over Pakistan. He emphasised that Pakistan is not just an automobile assembling country, as our members are manufacturers and suppliers of thousands of locally produced auto parts & components worth over Rs150 billion per year to all the foreign assemblers of passenger cars, light commercial vehicles, motorcycles, tractors, trucks and buses in Pakistan. Our members produce components as per global quality standards, tested and approved on Japanese, Korean and Chinese specifications.

Despite our humble contributions to job creation, GDP growth and domestic value addition, our industry is currently facing a life and death situation. Due to State Bank policies, Commercial Banks are not willing to open L/Cs for imports of our members’ raw materials and CKD components of automobile assemblers

The PAAPAM letter further stated that this situation has been persisting since May 2022 and has resulted in drastic reduction in production of all types of vehicles by over 70 percent. As a consequence, there has been a severe financial impact on the auto industry, particularly the SME auto parts manufacturers. We have, therefore, been forced to downsize our operations and lay off our trained workforce.

The automotive assemblers and most parts makers are JVs with global companies with strong financial and technical resources. At the end of the letter, PAAPAM also requested an opportunity for a short meeting with the Honourable minister to enable them to brief him on the auto industry’s current trauma.

R 16-4-2023

NON-DECLARATION OF ASSETS: TOP EIGHT OFFICIALS OF FBR TO FACE ACTION

ISLAMABAD: Top eight BS-21 officials of the Federal Board of Revenue (FBR) including members, Director Generals, Chief Commissioner and Additional Secretary would face action for not submitting their “Declaration of Assets & Liabilities”.

The FBR’s list also contains 48 officials of BS-20 of the Inland Revenue Service and Pakistan Customs Service.

The FBR has also decided to withdraw the performance allowance (special pay package) of a large number of tax officials, who would be failed to submit their Declaration of Assets & Liabilities by April 30, 2023.

On Friday, the FBR has issued a list of tax officials, who have failed to comply with the FBR’s repeated instructions to submit their Declaration of Assets.

The FBR’s instructions revealed that all officers of FBR (HQ) and its field formations (Customs/Inland Revenue/ex-Cadre) were requested vide FBR’s Circular No. 1 of 2022 and Circular No. 2 of 2022 to complete/submit their Declaration of Assets to ERM Section, FBR (HQ), by September 5, 2022. As per record, a number of officers have still not submitted the same. Secretary Revenue Division/Chairman FBR has taken a serious view of the fact that despite clear instructions issued by Establishment Division, many officers have still not submitted their Declaration of Assets & Liabilities.

The employees, who fail to file their annual Declaration of Assets & Liabilities on the due date each year, shall be de-notified for Performance Allowance for a period of three months or filing of Declaration of Assets & Liabilities for the year, whichever is later, the FBR said.

It is, therefore, intimated that Performance Allowance of all such officers who fail to submit their pending Declaration of Assets & Liabilities uptill the year ending on June 30, 2022, shall be discontinued/de-notified right after April 30, 2023 without any further notice, besides non-compliance will also be considered as “Misconduct” under the rules.

All officers of FBR (HQ) and its field formations (Customs/Inland Revenue/ex-Cadre) are directed to comply with the aforesaid instructions and submit their Declaration of Assets to ERM Section, FBR (HQ), Islamabad, latest by April 30, 2023 positively, failing which administrative action will be taken without any further delay, the FBR added.

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