

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

\*\*\*\*\*

C. No. 3(10)ST-L&P/07

Islamabad, the 11<sup>th</sup> August, 2014.

SALES TAX GENERAL ORDER NO. 68 OF 2014

Subject: - CLARIFICATION REGARDING "PERSONS LIABLE TO BE REGISTERED BUT NOT ACTUALLY REGISTERED" IN TERMS OF RULE 2(3)(ii) OF THE SALES TAX SPECIAL PROCEDURE (WITHHOLDING) RULES, 2007.

Vide Consolidated Order dated 20.03.2014 in Writ Petition No. 17639/2013 & Others, the Honourable Lahore High Court, Lahore has observed and directed as follows:

"3. .... under rule 3(2) of the Rules, as it stands today, a withholding agent on purchase of taxable goods from "persons liable to be registered but not actually registered" has to deduct sales tax at the rate of one percent of the value of taxable supplies. It is submitted that there is no mechanism provided under the Rules or the Sales Tax Act, 1990 ("Act") for the petitioners to find out or discover that the person making supply is a person "liable to be registered" under the Act. It is further contended that proviso to said rule is also offensive to section 7(4) of the Act.

....

5. In view of the matter and in the larger interest of effective tax governance, Ministry of Finance, Economic Affairs, Statistics and Revenue Division, Government of Pakistan and FBR are directed to reconsider / review the constitutionality and legality of the aforementioned rule within a maximum period of three months from today. During the process of reconsideration / review of the said rule, FBR may want to solicit the input / suggestions of the petitioners so that a workable and meaningful result is achieved."

2. In compliance of the Hon'ble Lahore High Court, Lahore Order, the aforementioned provision of the Sales Tax Special Procedure (Withholding) Rules, 2007 has been carefully reconsidered and reviewed. It has been found that according to section 2(25) of the Sales Tax Act, 1990 a "registered person" means a person who is registered or is liable to be registered under the said Act, provided



that a person liable to be registered but not registered under the Act shall not be entitled to any benefit available to a registered person under any of the provisions of the Act or the Rules made thereunder.

3. Section 14 of the Sales Tax Act, 1990 specifies that registration will be required for such persons and be regulated in such manner and subject to rules as the Board may, by notification in the official gazette, prescribe. Accordingly, in exercise of powers under section 14 of the Sales Tax Act, 1990, the Board has prescribed rules for registration appearing in Chapter I of the Sales Tax Rules, 2006. Rule 4 of the Sales Tax Rules, 2006 clearly specifies the persons who are required to be registered for the purpose of the Sales Tax Act, 1990 as follows:

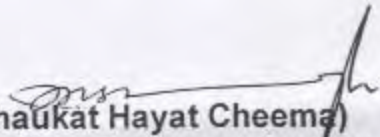
**"4. Requirement of registration.**— The following persons engaged in making of taxable supplies in Pakistan (including zero-rated supplies) in the course or furtherance of any taxable activity carried on by them, if not already registered, are required to be registered in the manner specified in this Chapter, namely: -

- (a) a manufacturer not being cottage industry;
- (b) a retailer whose value of supplies, in any period during the last twelve months exceeds five million rupees;
- (c) an importer;
- (d) a wholesaler (including dealer) and distributor;
- (e) a person required, under any other Federal law or Provincial law, to be registered for the purpose of any duty or tax collected or paid as if it were a levy of sales tax to be collected under the Act; and
- (f) a commercial exporter, who intends to obtain sales tax refund against his zero-rated supplies.

4. Under section 2(47) of the Sales Tax Act, 1990, a wholesaler (including dealer) is defined as to also include such person who is supplying taxable goods to a person who deducts income tax at source under the Income Tax Ordinance, 2001 (XLIX of 2001). In other words, every person making supplies of taxable goods to any person who deduct income tax at source falls within the definition of wholesaler (including dealer), and all such wholesalers (including dealers) are required to be registered in terms of rule 4 of the Sales Tax Rules, 2006 read with section 14 of the Sales Tax Act, 1990.

6. Section 153 of the Income Tax Ordinance, 2001 specifies the requirements, conditions and procedures for deduction (withholding) of income tax by a "prescribed person" on various transactions *inter alia* sales of goods. Sub-section (7) of section 153 defines prescribed person for the purpose of withholding income tax, whereunder sub-clause (j) of section 153(7)(i) species that every person registered under the Sales Tax Act, 1990 is a prescribed person.

7. Reading these provisions together, it transpires that all the persons registered under the Sales Tax Act, 1990 are "prescribed persons" (withholding agents) for the purpose withholding/deduction of income tax, and thus every person making supplies to such prescribed persons/withholding agents falls within the definition of wholesaler or dealer under the Sales Tax Act, 1990. Accordingly all such wholesaler or dealers are liable to be registered in terms of rule 4 of the Sales Tax Rules, 2006 read with section 14 of the Sales Tax Act, 1990.

  
(Shaukat Hayat Cheema)  
Secretary IR (Sales Tax Law,  
Procedure & Exemptions)