



JULY 2018

# TAX PAK

NEWSLETTER BY  
TOLA ASSOCIATES

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## EDITORIAL NOTE

End of July marked the end of the Asset Declaration Scheme, arguably the most famous scheme of recent times. The scheme presented a once in a lifetime opportunity for the citizens of Pakistan to be compliant at a nominal fee of 2% to 5% only. However, in terms of performance, the scheme could not achieve the expected results and tax revenue collections were

well below the desired target. Tola Associates generally, and undersigned specifically, being the author of the scheme, tried their best to educate the masses with respect to their queries and ambiguities in the scheme.

With the ninth edition of Tax Pak, we strive to keep serving the profession and general public in future also. We plan to research and ink material with respect to other important topics like Global Exchange of Information requirements under OECD, Transfer pricing, Common Reporting Standards, etc. we also plan to publish economic indicators each month, therefore, subsequent editions will be issued by 15th of every month.

Readers are requested to visit our website [www.tolaassociates.com](http://www.tolaassociates.com) or download our mobile apps from below links to access previous issues and other publications and to stay updated of future notifications.

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Readers are also requested to circulate this e-copy within their circle, as our primary aim is to benefit the masses.

**Ashfaq Tola - FCA**  
Editor in Chief



Mr. Ashfaq Tola, President Tola Associates was invited as a speaker and presenter at various seminars on Amnesty Schemes, both within and outside Pakistan. Following is a pictorial glimpse of these events.



Addressed seminar on “Amnesty Schemes and Non-Resident Taxation” in Jeddah on July 14,2018 which was attended by a large number of professionals. Additionally More than 9,000 professionals also attended the same through webinar. The seminar was organized by ICAP KSA Chapter and Pakistan Accountants Forum Saudi Arabia.

Addressed Seminar on “Amnesty Schemes” on July 17, 2018 which was attended by the Members of Rotary Club Karachi and Tax Professionals. The seminar was organized by Rotary Club Karachi.



## 1. SALES TAX SRO

### SRO 990(I)/2018 dated 01 August 2018.

By virtue of SRO 990(I)/2018, dated 1<sup>st</sup> August 2018, the Federal Government did not make any changes to the rates of petroleum products. However, the amount of Sales Tax levied on petroleum products was changed through the said SRO. A comparison of Sales Tax rates of petroleum products from August 2017 to June 2018 can be found below:

Date	SRO	Effective from	Products ST rate %				
			MS	HSD	LDO	HOBC	Kerosene
31/7/17	713	Aug 01, 17	23.5	40	0	17	0
5/8/17	757	Aug 06, 17	20.5	35.5	0	17	0
31/8/17	867	Aug 31, 17	17	30	0	17	0
30/9/17	984	Oct 01, 17	17	31	0	17	0
31/12/17	1331	Jan 01, 18	17	25.5	6	17	6
31/1/18	98	Feb 01, 18	17	25.5	7.5	17	7
28/2/18	265	Mar 01, 18	17	25.5	17	17	17
31/3/18	414	Apr 01, 18	21.5	27.5	16.5	17	17
30/4/18	560	May 01, 18	15	27.5	11.5	17	12
31/5/18	663	Jun 1, 18	7	17	1	17	7
11/6/18	729	Jun 12, 18	12	24	9	17	12
30/6/18	830	Jun 30, 18	17	31	17	17	17
1/8/18	993	Aug 01, 18	9.5	22	1	17	6

MS =	Motor Spirit (Petrol)
HSD =	High Speed Diesel
LDO =	Light Diesel Oil
HOBC =	High Octane Blending Component

## 2. CIR IS BOUND TO DECIDE APPLICATION U/S 119 OF ITO – SHC

The Honorable High Court of Sindh, in its Judgment No. I.T.R.A NO. 140 OF 2012 decided on 06.11.2017 in case of Commissioner Inland Revenue, Zone-II, LTU, Karachi Vs M/s Independent Newspaper Corp.

(Pvt) Ltd Karachi held that Commissioner Inland Revenue is legally bound to issue an order; to accept or reject an application for extension filed under Section 119 of Income Tax Ordinance 2001 (“ITO”). In case there is no response, the application shall be deemed to be accepted.

A person may apply to Commissioner Inland Revenue in terms of Section 119 of ITO 2001 for an extension of 15 days or such extended time under exceptional circumstance which are beyond the control of a person, for furnishing return of income or statement due to:

- Absence from Pakistan;
- Sickness or misadventure; or
- Any other reasonable cause

The Commissioner is legally bound to either accept or reject the application and pass an order regarding the same. In case the application gets rejected, or if further extension is required by a person, he may apply to the Chief Commissioner for an extension or further extension in time for the furnishing of return of income or statement. However, if no order of rejection of application is passed in writing by the Commissioner, it is assumed that the application request has been accepted by the Commissioner.

## 3. TOPIC OF THE MONTH

### - TAX EXEMPTIONS FOR FATA AND PATA

Federally Administered Tribal Areas and Provincially Administered Tribal Areas (“FATA” and “PATA”)

The Parliament of Pakistan, consisting of the National Assembly and the Senate, has passed the 31st Amendment to the Constitution of Islamic Republic of Pakistan (hereafter “**the Constitution**”).

Through this amendment, Article 1, 246 and 247 of the Constitution relating to 'Tribal Areas' have been amended.

The paragraphs below briefly describe the effect of the 31st amendment on the tax status of entities and persons residing in these areas and the continuation of certain concessions provided to existing entities as decided by the Economic Coordination Committee of the Cabinet (hereafter "ECCC") on 31<sup>st</sup> May 2018.

Under Article 1 of the Constitution, the 'Republic' of Pakistan is a Federation that consists of the following provinces, namely; Baluchistan, Khyber Pakhtunkhwa (hereafter "KPK"), Punjab and Sindh. Under the same Article the territory of Pakistan also includes 'FATA' and territories as are or may be included such as PATA.

Article 246 of the Constitution specifies the areas which are territories to be treated as Tribal Areas for the purposes of the Constitution.

**Article 246: Tribal Areas.**

a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes -

- i. The Tribal Areas of Balochistan and the KPK Province;
- ii. The former States of Amb, Chitral, Dir and Swat;
- iii. \* \* \* \* \*
- iv. \* \* \* \* \*

b) "**Provincially Administered Tribal Areas**" means:

- i. The districts of Chitral, Dir and Swat (which includes Kalam) the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb; and

- ii. Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti tribal territories of Sibi district; and

c) "**Federally Administered Tribal Areas**" includes:

- i. Tribal Areas adjoining Peshawar district;
- ii. Tribal Areas adjoining Kohat district;
- iii. Tribal Areas adjoining Bannu district; Tribal Areas adjoining, LakkiMarwat district;
- iv. Tribal Areas adjoining Dera Ismail Khan district; Tribal Areas adjoining Tankdistrict.
- v. Bajaur Agency; Orakzai Agency;
- vi. Mohmand Agency;
- vii. Khyber Agency;
- viii. Kurram Agency;
- ix. North Waziristan Agency; and
- x. South Waziristan Agency.

**Laws Applicable to FATA and PATA prior to the 31<sup>st</sup> Amendment:**

Prior to the 31<sup>st</sup> amendment, as per Article 247(3) no Act of Parliament was applicable on such Tribal Areas, unless the President directed so otherwise. Moreover, the President had the authority to issue Regulations for the governance of such Tribal Areas. Also, neither the Supreme Court, nor any High Court had any jurisdiction over such areas. Furthermore, the rules governing FATA were the Frontier Crime Regulations 1901, which were subsequently amended back in 2011 through a Regulation passed.

**Applicability of Tax Laws:**

The Tax laws passed by the Federal Government (ITO 2001, Sales Tax Act 1990, Federal Excise Act



2005 and the Customs Act 1969) are now applicable to FATA and PATA after the 31<sup>st</sup> amendment. Whereas the Provincial Sales Tax law of KPK governs only the whole of KPK.

### **The 31<sup>st</sup> Amendment to the Constitution:**

The amendment was passed on 28<sup>th</sup> May 2018 by our Parliament. Consequently, Article 247 has been omitted from the Constitution and Article 246 has been amended.

This means that such areas will now be treated as part of the Federation of Pakistan if such areas form part of any province as referred above. By way of another amendment, the Provincial Assembly of KPK, with two thirds majority, has included the areas which previously came under FATA, as part of Province of KPK. PATA territories shall form part of the Province of KPK or Baluchistan as the case may be.

On removal of Article 247(3), the non-applicability of taxation laws on these territories has finished. Now such territories are subject to all Acts of Parliament as they are now part of the province of KPK.

Moreover, the amendment itself does not provide any tax exemption to such areas from sales tax or any other exemptions. Since such territories have been integrated within the province of KPK through this amendment, it can be assumed that the areas included would now expect all facilities, protections, infrastructure provided within KPK, and that they will be governed by “all rules and laws” of KPK, and not just a selective few, unless provided otherwise by the Constitution or the Provincial Assembly thorough an Act. There were no provisions in the Constitution prior to 31<sup>st</sup> amendment mentioning taking a certain course as

to the taxation of FATA & PATA whilst merging them into provinces.

However, under KPK Finance Act 2013 Section 28(d) KPK Revenue Authority has the power to exempt, with the approval of government, “a class of persons, any area or areas of the Khyber Pakhtunkhwa from the whole or any part of the tax.”

Secondly, the merger is not an executive one; rather a Constitutional one. The addition of 21 seats includes 16 seats as general seats, 4 seats for women and 1 seat for non-Muslim in respect of the area of FATA. It has been provided in the clause 6 of the 31<sup>st</sup> Amendment that the election of these additional 21 seats relating to FATA shall be held within one year after the General Elections 2018. As per clause 1(2) of the 31<sup>st</sup> Amendment, the same shall come into force at once. Moreover, when the KPK Finance Act 2013 was enacted, the option of charging Sales Tax in the area of FATA and PATA was not introduced, discussed or approved.

In view of the above, it is our understanding that in order to extend the scope of the Provincial Sales Tax levied by the KPK Government inter alia on taxable services under the Second Schedule to the KP Sales Tax on Services Act 2013, within the province to the newly integrated areas (i.e FATA and/or PATA), the Provincial Assembly of KPK needs to table a Money Bill under Article 73 of the Constitution after the election of the abovementioned additional 21 seats has been conducted. This is essential as without representation of members of the respective area(s), levy of any tax in these newly integrated areas will be unconstitutional. Furthermore, another reason for this is that at the time of enactment of the KPK Sales Tax on Services Act

2013, the territories of FATA and PATA did not fall within the jurisdiction of KPK.

### **TAX CONCESSIONS IN FATA/PATA**

The ECCC of Pakistan in its meeting decided to continue certain concessions and immunities to persons and entities present in FATA and PATA. The highlights of the same are reported as under:

- 1) Exemption of income tax on profits and gains of existing businesses conducted by individuals for a period of five years. These businesses however need to be registered with FBR by 30<sup>th</sup> September 2018.
- 2) Exemption from Sales tax to the retailers to facilitate the general consumers.
- 3) Domestic consumers of electricity would be exempted from Sales tax on domestic consumption of electricity.
- 4) Federal Excise Act 2005 shall replace Central Excise Act 1944.
- 5) Non-customs paid vehicles will be allowed to be used in FATA/PATA for a period of five years ending on 30th June 2023. However, these vehicles will not be allowed to cross over to other areas of the country. On the expiry of the five years' relaxation period, the vehicles would be regularized on payment of leviable duty and taxes.
- 6) Exemption from all withholding taxes, including salary.
- 7) Any person seeking to set up new industrial undertaking is granted exemption from Income Tax subject to prior approval of the ECC. Details of exemption provided by the ECC have been notified through SRO's.

In our view, the Provincial Assembly of Khyber Pakhtunkhwa and Baluchistan will have to provide Tax exemptions in line with the decisions made in the Economic Coordination Committee and the exemptions provided by the Federal Board of Revenue through enacting SROs relating to Income and Sales tax.

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