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# TAX NEWS LETTER

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## Preface

This document summarizes the crucial changes made in tax laws during the month of December 2023. The document contains comments, which represent our interpretation of the legislation. We therefore recommend that while considering their application to any particular case, reference be made to the specific wordings of the relevant piece of legislation.

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# INCOME TAX UPDATES

## FBR INTRODUCES SWAPS RULES

**S.R.O. 1846(1)/2023**

Through Finance Act 2022, Section 164A was introduced whereby Federal Board of Revenue has been empowered to obligate any person required to collect or deduct tax under the Ordinance to integrate with Synchronized Withholding Administration and Payment System to act as SWAPS agent.

In a move towards modernization and efficiency, the FBR is set to exercise power vested in it with significant amendments to the Income Tax Rules, 2002 by inserting a new chapter called SWAPS Rules. Here's a snapshot of the key updates:

### Applicability:

The SWAPS Rules apply to all SWAPS agents who are defined as person or class of persons notified by Board to collect or deduct withholding taxes through Synchronized Withholding Administration and Payment System. Upon notification by the Board, SWAPS agents must adhere to the requirements outlined in this chapter.

### Registration and Obligations:

SWAPS agents are required to update their IRIS profile upon notification. They must install approved fiscal electronic devices and software for withholding tax transactions. SWAPS becomes mandatory for specified transactions from the notified date, and agents must ensure compliance with digital invoices and aligned CNIC, NTN, and IBAN details.

### Additional Requirements:

The SWAPS Payment Receipt (SPR) includes specific details such as SWAPS-ID, SPR number, transaction particulars, and comprehensive tax-related information.

### Certificate of Payment:

The SWAPS Payment Receipt (SPR) serves as the sole proof of tax collection or deduction, including for refund claims or tax credits.

### Extension of Time:

SWAPS agents can request an extension for registration or integration, subject to approval by the Commissioner, for a period not exceeding thirty days and not exceeding 90 days in aggregate.

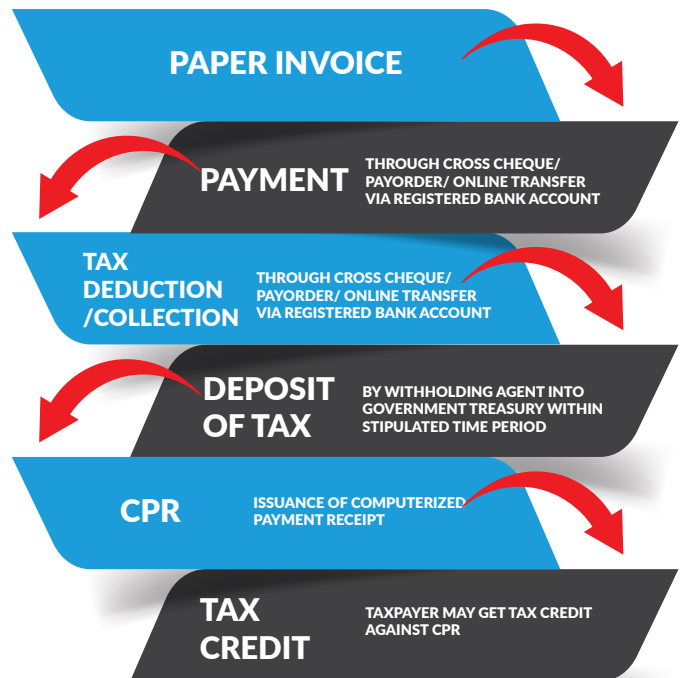
### Consequences of Non-Compliance:

SWAPS agents found in non-compliance with the SWAPS Rules may face penal provisions under the Income Tax Ordinance, 2001.

These amendments reflect FBR's commitment to enhancing digital processes and ensuring strict compliance with specified requirements. However, these are merely rules which would be effectuated only when FBR notifies any person to be SWAPS agent in compliance with Section 164A of the Income Tax Ordinance, 2001.

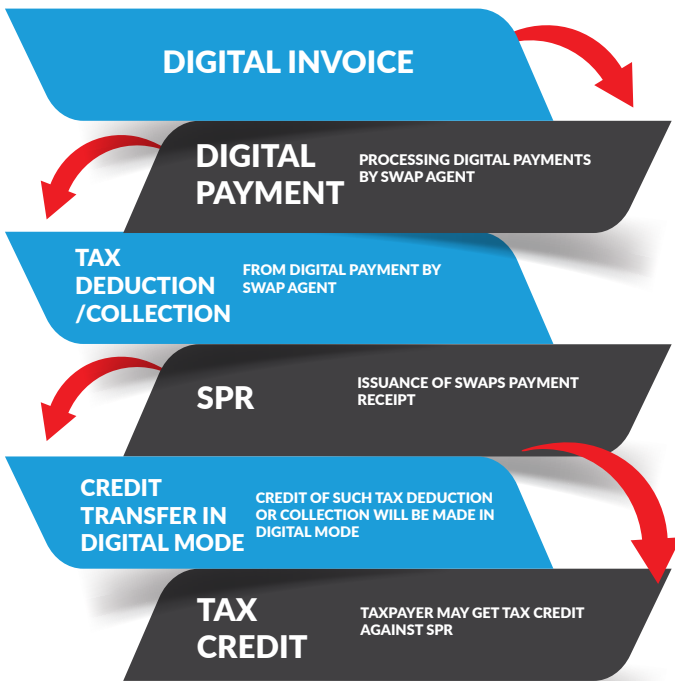
For better understanding, a comparison between the existing withholding system and the new synchronized withholding system is given below:

## EXISTING WITHHOLDING SYSTEM



# INCOME TAX UPDATES

## SYNCHRONIZING WITHHOLDING ADMINISTRATION & PAYMENT SYSTEM-SWAPS



## RULES FOR REAL-TIME ACCESS TO INFORMATION AND DATABASES

**SRO 1771/2023**

With the intention to equip the Board to gather actionable information against the tax evaders to broaden the tax net, Section 175A was introduced under the Income Tax Ordinance, 2001 vide Finance Act 2020.

In a groundbreaking move, the Federal Board of Revenue (FBR) through notification dated December 05, 2023 has unveiled a draft set of rules and regulations aimed at fostering real-time access to information and databases through the integration of organizations with the Board's cutting-edge system, RADAR. Here's a snapshot of the key highlights:

### Application of the chapter:

This chapter applies to fulfill the purposes of section 175A of the Ordinance, providing real-time access to information and databases to the Board by integrated organizations.

### Integration Deadline:

Organizations are required to integrate with RADAR by January 15, 2024, or as notified.

### How to Integrate:

To align with the Board's vision, integrated organizations are mandated to establish and maintain a robust IT platform. The data exchange should be in a digital format as specified by the Board.

### Transitional Period Reporting:

During the transition to real-time access, organizations are required to periodically provide information in a prescribed manner, ensuring a smooth shift.

### Data Security is Paramount:

Ensuring the integrity of data is non-negotiable. Integrated organizations must furnish true, correct, and authenticated information, employing secure means with encryption and authentication protocols.

### Record Keeping and Inspections:

Maintaining comprehensive transaction records is a must. Authorized Board officers may conduct inspections to verify compliance, ensuring a transparent and accountable integration process.

### Consequences of Non-Compliance:

Tampering with the IT platform, refusal to integrate, or providing inaccurate information may result in penalties and prosecution. Principal officers bear personal responsibility, with potential liabilities for directors and officers.

### Mandatory Integration for Designated Entities:

Several agencies, authorities, institutions, and organizations are enlisted for mandatory integration with RADAR, reinforcing the importance of a unified and streamlined system. The list includes Federal Govt organizations, Provincial Govt Organizations, Financial Institutions, Private Organizations including NPOs. A complete list of organizations can be accessed at:

<https://mooreshekhamufti.com/wp-content/uploads/2024/01/List-of-designated-entities-for-mandatory-integration.pdf>

# INCOME TAX UPDATES

This move by the FBR signifies a transformative leap toward transparency, efficiency, and real-time insights. As the integration deadline approaches, organizations are urged to embrace these changes for a seamless and future-ready financial landscape.

## CHANGES IN ONLINE INTEGRATION OF BUSINESSES RULES

**SRO 1845/2023**

Through SRO 779(I)/2020 dated August 26, 2020, FBR introduced Chapter VIIA in the Income Tax Rules, 2002 whereby certain businesses were required to install prescribed fiscal electronic device and software for integration with FBR's system.

The FBR, through draft notification dated December 22, 2023 has proposed to make certain amendment in Online Integration of Business Rules initially promulgated through SRO 779(I)/2020 dated 26th August, 2020. Here's the snapshot of some significant changes.

### Amendment in Rule 33B. Obligations and requirements

- The person would now not only be required to install electronic fiscal device (EFD) but would also be required to integrate the same with Board.
- The EFD should only be installed from an accredited vendor.
- The EFD installed should be communicated to the board within three months of the issuance of these rules.

### Amendment in Rule 33C. Accreditation of points of sales (POS) systems

- Previously the board was responsible to accredit the vendor. Now it has been proposed to establish a license committee to verify the accreditation of the vendor supplying the EFD and thereafter monitor the conduct of the vendor.
- The convener of the licensing committee shall not be below the rank of an Additional Commissioner who shall be appointed by Member Digital Initiatives.
- The licensing committee shall recommend or reject an application within fifteen days of date of submission.
- The licensing committee shall evaluate the applications and make recommendations to Member Digital Initiatives for the renewal of the license.



- The convener of the licensing committee shall have the power to initiate process for cancellation of the license.

### Amendment in Rule 33E. Application for grant of license

A detailed procedure and rules for filing application for grant of license has been prescribed.

# SALES TAX UPDATES

## ONLINE INTEGRATION OF FMCG SECTOR WITH FBR'S ELECTRONIC SYSTEM

The Federal Government is actively modernizing tax collection processes, focusing on automating various aspects. In a significant move, major retailers were integrated online, linking their Point of Sale (POS) systems with the Federal Board of Revenue (FBR) for real-time sales reporting.

Recent amendments through Notification No. 1525 (I)/2023 empowers the FBR to designate any registered persons as "integrated suppliers". This requires them to electronically transmit sales tax invoices in real time, aligning with Tier-1 Retailers.

Notification 1525-DI(I)/2023 dated 12 December 2023 extends this integration to the entire FMCG supply chain, including importers, manufacturers, wholesalers, distributors, and wholesaler-cum-retailers. They are now classified as "integrated suppliers" and must synchronize their invoicing systems with the FBR's electronic system.

The term "Fast Moving Consumer Goods" refers to non-durable consumer products supplied based on daily consumer demand.

Although the implementation date is not specified in Notification No. 1525 (DI)/2023, we anticipate the FBR will communicate it separately through an official gazette notification, following the guidelines in Notification No. 1525 (I)/2023.

## POSITIVE LIST OF INPUT MATERIALS FOR ADMISSIBILITY OF INPUT TAX

Historically, businesses encountered disputes over input tax admissibility. To address this, the Federal Board of Revenue (FBR) has introduced an industry-specific positive list, which you can access

<https://mooreshekhamufti.com/wp-content/uploads/2023/12/Circular-for-Recommendation-Sector-Wise-Input-Tax-Positive-List.pdf> This list serves as a comprehensive guide, promoting transparency and minimizing uncertainties in the realm of input tax claims.

Despite the legal lacunas and uncertainty regarding treatment of service-related input tax, the positive list is a welcoming step toward reducing conflicts between taxpayers and authorities. Embracing this initiative could foster a more cooperative and clear tax environment

We strongly suggest businesses should conduct a thorough review of the positive list. Identify any potential issues or concerns and communicate them promptly to the FBR. This proactive approach ensures a seamless integration during future return filings when the positive list is expected to become an integral part of the return form.



## AMENDMENTS IN TIER-1 RETAILERS RULES

[SRO 1775(I)/2023 DATED 07 DECEMBER 2023]

Tier-1 Retailers are required to notify the Board about their retail outlets and to register each Point of Sales (POS) through computerized system along with certain information to be furnished under Rule 150ZEB of the Sales Tax Rules, 2006. Vide above notification, extent of required information has been expanded to include particulars relating to POS solution provider such as name, NTN and proprietors' details thereunder.

Tier-1 Retailers have also been restricted from issuing temporary or draft invoices through POS system and entertaining sale returns or exchange without reference to original invoice. Meaning thereby credit notes issued by such retailers against sales return from unregistered buyers must mention the original sales tax invoice reference number.

# SALES TAX UPDATES

## WIDENING SCOPE OF INTEGRATION AND LICENSING RULES

[SRO 1788(I)/2023 DATED 11 DECEMBER 2023]

Previously FBR had issued licensing rules for issuing licenses to vendors eligible for providing IT services in relation to online integration of Tier-1 Retailers. Now, since the FBR is introducing online integration requirement for more sectors, licensing rules have also been updated accordingly.

Vide above notification, FBR has also relaxed some conditions including the reduction in minimum paid up capital from Rs. 100 to Rs. 10 M for issuance of license. This would ultimately open doors for small vendors too to explore this venture who were unable to qualify earlier due to threshold limits.

Likewise, certain restructurings have also been made in reporting and operational mechanism of licensing committee which shall now be convened by Member Digital Initiative instead Project Director.



## WIDENING SCOPE OF TIER-1 RETAILERS

[SRO 1842(I)/2023 DATED 21 DECEMBER 2023]

Broadening tax net around Retailers has always remained a crucial part of Federal Government measures. Documenting this segment of the supply chain would ultimately lead to fill out tax gaps. Since, 2017 with introduction of category of "Tier-1 Retailers", Government is pursuing a policy to bring into tax net the large retailer gradually. Through Finance Act, 2022; the Federal Government has vested power in FBR to bring retailers dealing in specified goods subject to collection of advance tax under Section 236H of the Income Tax Ordinance, 2001 by notifying an appropriate threshold-based tax collection from retailer under aforesaid provision.

Now the FBR has notified that any retailers from whom tax collection under section 236H during the preceding year exceeds Rs. 100,000 will be categorized as Tier-1 Retailer and will pay sales tax at standard rate apart from being integrated with the FBR system for real time online reporting of sales.

It is pertinent to point out that manufacturers, distributors and wholesaler including dealer of various sectors including pharmaceuticals, poultry and animal feed, edible oil and ghee, auto-parts, tyres, varnishes, chemicals, cosmetics, IT equipment, electronics, sugar, cement, iron and steel products, motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam are required to collect advance tax at the rate of 0.1% of sales from retailer at the time of making sales.



# IMPORTANT CASE LAWS

## DECISION BY SINDH HIGH COURT ON TAX EXEMPTION ON INTER CORPORATE DIVIDEND

**INTERNATIONAL BRANDS LIMITED & OTHERS VS FEDERATION OF PAKISTAN & OTHERS (2023) 128 TAX 368**

### Background:

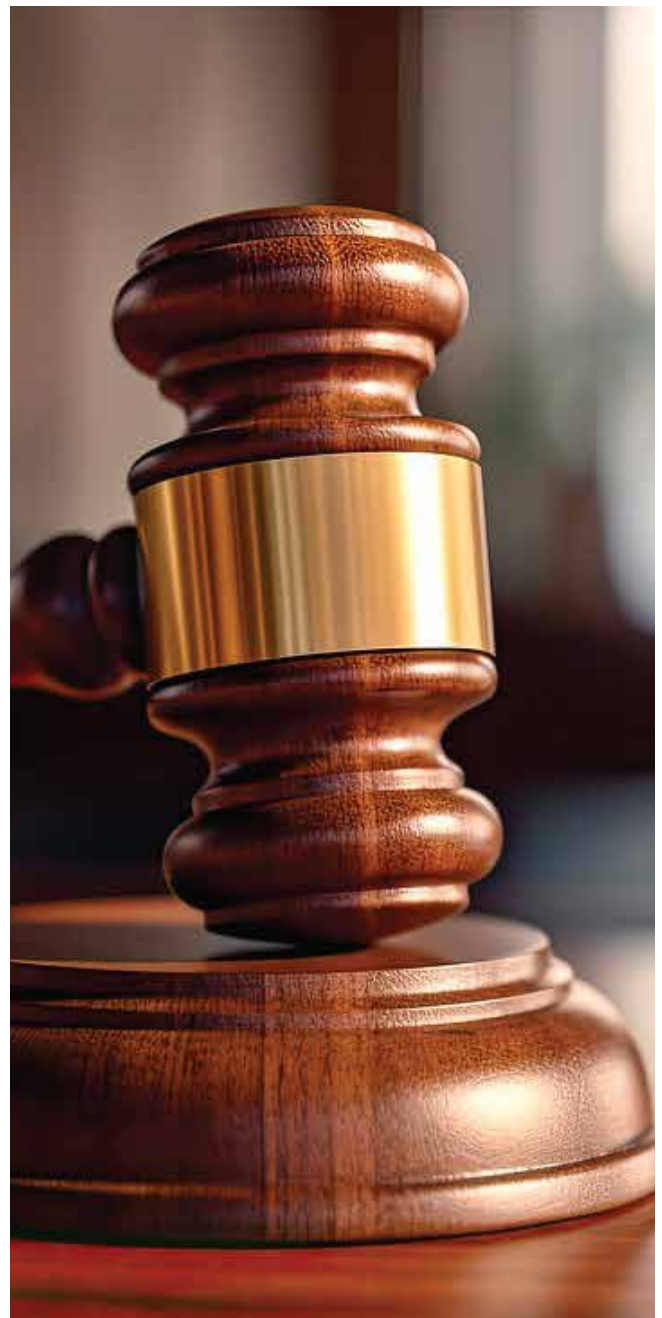
- Vide Finance Act, 2007, Clause (103A) was introduced in the Second Schedule, granting tax exemption for inter-company dividends to eligible companies under sections 59AA or 59B of the Ordinance.
- Finance Act 2016 omitted the reference to section 59B from Clause (103A), leading to the withdrawal of the exemption for group companies formed under section 59B.

### Issue Involved:

- Whether the exemption would extend to groups formed under section 59B before the Finance Act 2016, having acquired vested right.

### Court's Decision:

- Parliament has the prerogative to confer and withdraw fiscal benefits in the public interest.
- No irrecoverable connection between Clause (103A) and section 59B was demonstrated, dismissing the argument for the exemption's perpetuation during 59B's tenancy.
- Section 59AA and 59B serve different purposes, and no discrimination was found.
- Remedy legislation is enacted to correct existing law, and the petitioner's plea did not fall under this category.
- The case that Clause (103A) confers vested rights, in the nature of past and closed transaction, to perpetuate the benefit even after its omission could not be made out.
- Section 54 of the Ordinance explicitly states no exemption unless provided in the Ordinance.





# IMPORTANT CASE LAWS

## DECISION BY LAHORE HIGH COURT ON ADVANCE TAX ON INHERITED PROPERTY

**MUHAMMAD ASLAM VS FEDERAL BOARD OF REVENUE (2023) 128 TAX 404**

### Background:

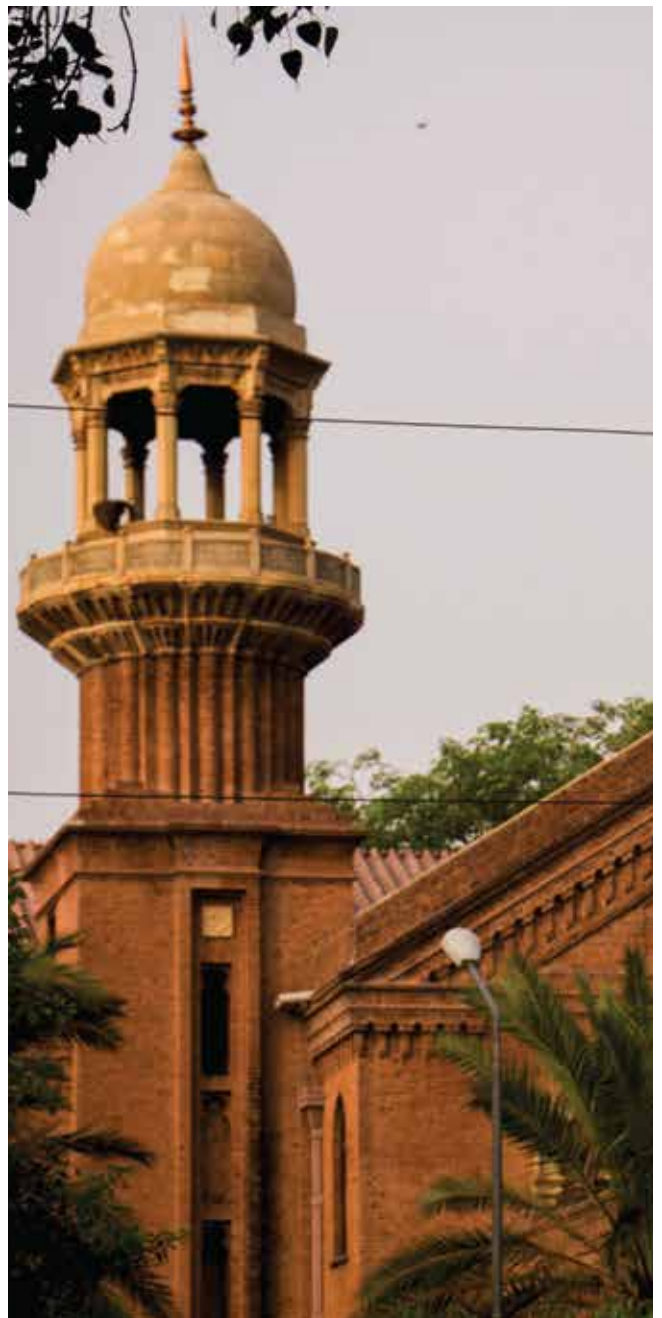
- The petitioner inherited agricultural land from his father after the latter's death in 2013.
- The inheritance was officially incorporated into the revenue record in 2019.
- Upon selling part of the inherited property in 2019, authorities noted that advance tax under Section 236C was payable on inheritance within three years from the date of mutation.

### Issue Involved:

- Whether collection of advance tax under Section 236C is applicable on inherited property from the date of deceased death or from the date of mutation.

### Court's Decision:

- Inheritance confers ownership upon legal heirs immediately upon the death of the individual, according to Islamic Personal Law.
- Transfer of property through inheritance cannot be categorized as an acquisition.
- Therefore, Section 236C of the Ordinance, related to the collection of advance tax on acquisition, is not applicable to inherited property.
- The three or five-year period for advance tax on inherited property starts from the date of the deceased's death, not from the date of mutation or incorporation into the revenue record.





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