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COMMENTS ON THE TAX LAWS (AMENDMENT), BILL 2024

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Prologue:

- The Federal Government has tabled a bill before the National Assembly on 18th December, 2024 titled as the “Tax Laws (Amendment) Bill, 2024” (“the Bill”). The Bill has proposed amendments in the Income Tax Ordinance, 2001 (“ITO”), Sales Tax Act, 1990 (“STA”), Federal Excise Act, 2005 (“FEA”) and Islamabad Capital Territory (Tax on Services) Ordinance, 2001 (“ICTO”). We have, hereby, prepared our comments on the significant amendments proposed in the ITO, STA, FEA and ICTO.
- Please feel free to provide your feedback for further improvements in this publication.

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Kind Regards,

**Tola Associates; and
Tola & Tola**

Thursday, December 19, 2024

1. CONCEPT OF AN ELIGIBLE PERSON INTRODUCED [SECTION 114C(5)(B)]

- The Bill has proposed to introduce the concept of an “eligible person”, through enacting a new Section 114C to the ITO. An eligible person has been defined in Section 114C(5)(b) as a person, who has filed a return of income for the tax year immediately preceding the year of transaction mentioned in sub-section (l) and has **sufficient resources** in the wealth statement in case of an individual, or financial statement in case of a company or an association of persons, as the case may be, for such transaction. Further, as per the proviso to the aforesaid sub-section, in case of an individual, the eligible person shall include his immediate family members.

For e.g. if a person opts to buy an immoveable property during Tax Year 2025, he will be an eligible person if he has filed a return of income for Tax Year 2024.

Ineligible person

- An ineligible person has been defined under Section 114C(5)(d) as a person who is not an eligible person.

Cash Equivalent Assets

- The Bill has proposed to define cash equivalent assets as assets that may be prescribed. However, it is unclear as to who may prescribe said assets.

Sufficient resources [Section 114C(5)(f)]

- The Bill has proposed to define sufficient resources as 130% of the cash and equivalent assets, declared by a person in his wealth statement filed for the latest tax year or in the case of a company or association of persons cash and equivalent assets, declared in the financial statements attached with the income tax return for the latest tax year.

Immediate family members [Section 114C(5)(c)]

- The Bill has proposed to define immediate family members in respect of an individual, shall include his parents, spouse, son (below the age of twenty-five years), daughter (who is unmarried, or widowed, or divorced) or a special child who has a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder his full and effective participation in society on an equal basis with others.

Restrictions proposed on transactions made by an ineligible person [Section 114C(1)]

- Application for booking, purchase or registration of a motor vehicle shall not be accepted or processed by manufacturer of motor vehicle or vehicle registering authority of excise and tax department.
- Application or request to any authority responsible for registering, recording or attesting transfer of any immovable property, more than such value in aggregate in a tax year as may be notified by the Board from time to time, shall not be accepted or processed. This means that the restriction shall not apply on purchase or sale of immoveable property unless the FBR notifies the threshold vide a SRO / Notification.
- Any person, authorized to sell securities including debt securities or units of mutual funds including a person authorized to open and maintain an account or clear such transactions, shall not sell, open an account or clear sale of securities, mutual funds, to an ineligible person being an individual or an AOPs;
- Banking Companies have been restricted from opening or maintaining an already opened current, savings or an investor account of those persons that have been

notified by the Board. This means this restriction will become effective once the names are notified by the FBR

General restriction proposed on cash withdrawals by any person

- **Banking Companies** have been restricted from allowing cash withdrawals from the bank accounts of **any person** in excess of the limit prescribed by the Board. This means that this general restriction will come into effect once the threshold has been notified by the FBR.

Certain transactions proposed to be carved out from the aforesaid restrictions

- An ineligible person can purchase rikshaws, motorcycle rikshaws or tractors;
- An ineligible person can purchase a pick-up vehicle upto 800CC;
- An ineligible person can purchase motor vehicles other than the above, or trucks and buses, subject to the limitations notified by the Board. This means that for vehicles other than rikshaws, motorcycle rikshaws, tractors, or a pick-up vehicle up to 800CC, an ineligible person cannot purchase the same until the Board notifies the limitations and restrictions;
- A transaction conducted by a public company or a non-resident person, except for cash withdrawals from their bank accounts.

Certain transactions proposed to be carved out from the aforesaid restrictions

- If an ineligible person files their income tax return for the latest completed tax year, and files a source of investment and expenditure statement / declaration on the Board's web portal specifying the sources of funds for

making such transaction. It may be noted that the sources of investment and expenditure statement filed by the person and sufficient resources mentioned in sub-section (5), shall not be construed as nature and source of income for the purposes of Section 111.

2. EXCHANGE OF BANKING AND TAX INFORMATION RELATED TO HIGH-RISK PERSONS

- The Bill has proposed to introduce Section 175AA in the ITO, whereby the Board has been authorized to share information of turnover, income including taxable income, for one or more tax years, identification data including bank account numbers declared in the income tax return, wealth statement, financial statement or in any other document to the Board, in respect of persons or classes of persons, along with data based algorithms, as may be prescribed, with scheduled banks in Pakistan; and
- Where the data is shared as above by the Board, the Banks have been obliged to provide particulars such as name, account numbers of those persons, where the banking information is at variance with the data algorithms provided by the Board as above.
- The information received under Section 175AA of the ITO shall be used for tax purposes and be kept confidential as per Section 175AA(2).
- Section 175AA has been given a general overriding effect through a non-obstante clause, and specifically over Banking Companies Ordinance 1962, Section 216 of the ITO and any regulations made under the State Bank of Pakistan Act 1956.

3. THE BOARD PROPOSED TO BE EMPOWERED TO APPOINT AUDITORS, AND AUDITORS HAVE BEEN PROPOSED TO BE GIVEN THE STATUS OF INCOME TAX AUTHORITY

- The Bill has proposed to amend Section 222 of the ITO, whereby the Board has been empowered to appoint auditors on a contractual basis or through a third-party arrangement as the Board deems fit for carrying out the purposes of this Ordinance.
- A corresponding amendment has been proposed to be made under Section 207, whereby, the auditor appointed u/s 222(2) has been proposed to be given the status of an Income tax authority.
- A corresponding amendment has been proposed to be made under Section 216, to allow disclosure of particulars mentioned in Section 216(1) to the auditor appointed by the board u/s 222(2) to assist any authority mentioned in Section 207(1)(b) to (g), after a non-disclosure agreement (“NDA”) is made with the auditor as may be prescribed. The said amendment fails to mention who the NDA shall be prescribed by.

POINTS TO PONDER:

- The concept of an eligible person and the consequent restrictions as stated above may violate Articles 18 (Freedom of trade, business or profession), and Article 23 (Provision as to property) of the Constitution of Islamic Republic of Pakistan 1973 (“Constitution”).
- The concept of sufficient resource needs to be revisited. Pursuant to the Bill, if Mr. X owns an immovable property and has declared it in his wealth statement at PKR 100 (cost), and sells it after 10 years at PKR 500, and wishes to purchase a property worth PKR 400, then he will not be considered an eligible

person as his wealth statement for the previous tax year shall include the property at the cost of PKR 100. This is violative of Article 23, as the restriction in question is not reasonable.

Restricting any person, including a non-resident person or a public company, from withdrawing cash from their bank account beyond a threshold prescribed / notified by the FBR. This restriction needs to be revisited as restricting a taxpayer to withdraw his money beyond a certain threshold is impractical. This is violative of Articles 18 and 23 of the Constitution. For e.g. there are certain companies that have employed their manpower in remote areas to their clients premises that lack basic internet facilities and hence internet or mobile banking may not be accessible. Therefore, the Company may have to incur expense such as their salaries and lodging in cash for which cash withdrawals need to be made. It is settled law that the revenue authorities cannot dictate the taxpayer as to how a taxpayer may conduct its business. Reliance is placed on a judgment of the Hon’ble Supreme Court of Pakistan (“SCP”) reported as **1992 PTD 954** wherein the Hon’ble SCP held as follows:

Quote:

6. ... An assess is entitled to manage his own affairs to the best of his benefit even by in adopting legal modes which may result in reduction of tax and the same if covered by the provisions of law cannot be challenged on the ground of prudence, advisability or business practice.

Unquote

- Further, subjecting non-resident persons to this restriction is discriminatory and may violate Article 25 (Equality of all citizens) of the Constitution.

- Filing of sources of investment and expenditure statement is against the self-assessment scheme under the ITO. Therefore, it may be held to be ultra vires the ITO by the Hon'ble Courts of law in Pakistan.
- Section 175AA may violate Article 14 of the Constitution, as it breaches the taxpayer's right of privacy. Further, no degree of variance has been specified in Section 175AA(1)(b). As such, the FBR may obligate the Bank to share particulars of the taxpayer even if there is the slightest degree of variance. The same seems arbitrary and must be revisited.
- The appointment of third party auditors and the sharing of information of the taxpayer to them may violate Article 14 of the Constitution. Further, it puts the taxpayer at risk, as the auditor may be the auditor of the taxpayer's competitor, and as such access to the taxpayer's information may give rise to a conflict of interest. Further, it may also militate the taxpayer's right to do business as enshrined in Article 18 of the Constitution

1. Introduction of an automated risk management system for the purpose of input tax adjustment (Section 8B(4))

- In section 8B subsection (4) of the STA, which pertains to the Board's power to prescribe a limit of input tax adjustment for any person. The Bill has proposed the introduction of a data based automated risk management system that is aimed to limit input tax allowances.
- Further, a new proviso is to be added that provides a registered taxpayer to contest the action taken under abovementioned section by filing an application with the concerned Commissioner who shall decide the case within a stipulated time of sixty days from the date of filing of such application

2. Concept of bar on operations of Bank Accounts (Section 14AC)

- The Commissioner shall have the power to direct can direct property registering authority to bar the transfer of immovable property of a person who fails to register under the law. The Commissioner may in writing order the bar to be removed on transfer of immovable property not later than two working days upon registration. An aggrieved person can appeal to the chief Commissioner within 30 days of the decision.

3. Introduction of other coercive actions for non-registration (Section 14AE)

- If a person fails to register under the law, the Chief Commissioner has the authority to seal their business premises, seize movable property, or appoint a receiver to manage their taxable activity. However, these actions cannot be taken unless a public notice is issued specifying the date of action, and a committee, including the Chief Commissioner, concerned Commissioner, and a representative from the Chamber of Commerce and trade bodies, provides the person an opportunity to be heard through an open court. The decision must also be made public through the Board's website and a newspaper.

- If the person registers, the Chief Commissioner is obligated to remove the appointed receiver not later than two working days.
- Any person aggrieved by the Order of the Commissioner under Section 14AE(1) can prefer representation before the Board within 30 days of receiving the decision.

4. Appointment of experts and auditors (Section 32B)

- The Board or the Commissioner may appoint as many experts as needed for tasks such as audit, investigation, litigation, or valuation. Additionally, the Board may appoint auditors, either directly or through a third party including a payroll firm and confer such powers as may deemed necessary to assist the authorities mentioned in subsection (1) of section 30 of the STA which include a Chief Commissioner Of Inland Revenue, Commissioner Of Inland Revenue, Commissioner of Inland Revenue (Appeals), Additional Commissioner of Inland Revenue, Deputy Commissioner of Inland Revenue, District Taxation Officer Inland Revenue, Assistant Commissioner of Inland Revenue, Assistant Director Audit Inland Revenue, Inland Revenue Officer, Superintendent Inland Revenue, Inland Revenue Auditor Officer, Inspector Inland Revenue and officer of Inland Revenue with any other designation.

5. Amendment in Section 56B (Disclosure of information by a public servant)

- In subsection (1) after the word "servant" the expression ", expert or auditor appointed under section 32B" shall be inserted. This imposes a duty on the experts and auditors to not disclose any information acquired under any provision of this Act, subject to Section 216 of the ITO

6. Amendment in Section 73 (Certain transactions not admissible)

- The Bill has proposed to amend subsection (4) whereby the words "aggregate. one hundred million rupees in financial year or ten million rupees", the words "a financial year or" shall be substituted. Further, after the word "Act", the words "as may be specified by the Board through a sales tax general order" shall be inserted.
- This proposed amendment shall remove the limit prescribed for input tax adjustment for supplies to unregistered persons. Moreover, the Board, through a sales tax general order will specify the threshold of the said supplies

POINTS TO PONDER:

- Incorporating measures directed to risk such as the automated risk management system to further limit input tax adjustments is crucial. However, it may present fairness and transparency issues. Further, the system may be vulnerable to faults which will lead to burden on the appellate fora which is already drowning in a plethora of cases.
- This may violate Articles 18 and 23 of the Constitution. Further, an appeal to should lie before either the Tribunal or a Committee consisting of independent members from the business community as well in order to give a fair hearing to the person as enshrined under Article 10A of the Constitution. The Chief Commissioner is not an independent forum.
- The bar on transfer of immovable property for non-registered taxpayers under the STA is a disproportionate measure, as the STA governs taxpayers who sell goods, whereas, the bar is being placed on transfer of immovable property that can also be a personal asset of the person. This may violate Article 23 of the Constitution.

- Measures such as sealing up business premises and/or appointing receivers to go in enhancing compliance are extreme and can hurt a business. Further, the reputation loss that such action causes can be immense and can certainly discourage a conducive environment to do business. Moreover, an appeal from the Chief Commissioner's Order should lie before the Hon'ble ATIR or the Hon'ble High Courts of law instead of the Board to give an independent and free hearing.
- The appointment of third party auditors and the sharing of information of the taxpayer to them may violate Article 14 of the Constitution. Further, it puts the taxpayer at risk, as the auditor may be the auditor of the taxpayer's competitor, and as such access to the taxpayer's information may give rise to a conflict of interest. Further, it may also militate the taxpayer's right to do business as enshrined in Article 18 of the Constitution

1. Amendment in Section 26 (Power to seize)

- In sub-section (1), after the word "thereunder" the expression "or dutiable goods without affixing or affixing counterfeited tax stamps, banderoles, stickers, labels or barcodes, as required under section 45A for monitoring or tracking by electronic or other means" shall be inserted. The amendment adds that goods without the required tax stamps, banderoles, stickers, labels, or barcodes (which are essential for monitoring or tracking by electronic or other means as per section 45A) will be considered non-compliant with the law.

2. Amendment in Section 27 (Confiscation of goods subject to federal excise duty)

- In sub-section (1), after the word "counterfeiting", the expression "or such goods without affixing or affixing counterfeited tax stamps, banderoles, stickers, labels or barcodes, as required under section 45A for monitoring or tracking by electronic or other means" shall be inserted.
- New sub-section is added, namely subsection (4) where the Board may authorize the Federal or Provincial Government to exercise the powers and duties of Inland Revenue officers under section 26 and sub-section (1) of section 27 in cases of goods which are subject to monitoring under section 45A and counterfeited goods

POINTS TO PONDER:

- Allowing seizure of goods without proper tax stamps or with counterfeit markings enhances control over excise duties and reduces tax evasion. However, businesses may struggle to comply with these requirements.
- Expanding confiscation grounds to include goods missing proper documentation strengthens enforcement but may negatively impact legitimate businesses. The ability for the Board to authorize enforcement actions provides additional flexibility

1. Amendments in Section 3 subsection (1) (Scope of Tax)

- The amendment to the Islamabad Capital Territory (Tax on Services) Ordinance, 2001, will require service providers listed in Table 1 or Table 2 of the Schedule to integrate their businesses with the Board's computerized system for real-time service reporting.

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