

COMMENTS ON TAX LAWS (AMENDMENT) ORDINANCE 2025



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PREAMBLE

The President of the Islamic Republic of Pakistan (“Pakistan”) in an emergent move, promulgated an Ordinance titled as Tax Laws (Amendment) Ordinance 2025 (“Amendment Ordinance”) on the 2nd May 2025 that has made certain amendments to the Income Tax Ordinance 2001 (“ITO”) and the Federal Excise Act 2005 (“FEA”), and has been made effective from 2nd May 2025. The Amendment Ordinance has also been published in the Official Gazette on 2nd May 2025 vide Publication No. F. No. 2(1)/2025-Pub.

To read the gazetted version, you may [Click Here](#)

7th May, 2025

AMENDMENTS TO THE ITO

A. Section 138 – Recovery of tax out of property and through arrest of taxpayer

The President has added the following new sub-section 3A in Section 138:

Quote

(3A) Notwithstanding anything contained in this Ordinance or any other law or any rule, any decision or judgment of any court, forum or authority, the tax payable under any provision of this Ordinance or any assessment order shall become immediately payable or within the time specified in the notice issued by the income tax authority under this sub-section, irrespective of the time provided under any other provision or the said decision or judgment, in case the issue giving rise to the tax payable is decided by a High Court or Supreme Court of Pakistan.

Unquote

Comments:

This amendment is geared towards cases (“such cases”) which have been decided by the Hon’ble Supreme Court of Pakistan (“SCP”), and Hon’ble High Courts of Pakistan (“HCP”). In such cases, pursuant to this amendment, the FBR can affect recovery proceedings immediately without issuing a (fresh) Notice for recovery under Section 138.

In such cases, if a recovery notice was issued prior to obtaining an interim injunction by the Hon’ble SCP or Hon’ble HCP, therefore, upon decision of the said Courts, the recovery can be immediately affected by the FBR u/s 140 of the ITO without the need to issue a fresh recovery Notice u/s 138(1).

Upon announcement of the judgment by the Hon’ble HCP, the counsel for the taxpayer may make an oral motion requesting the judgment to be suspended for 15 to 30 days, and to maintain any (ad)interim Orders till the time the judgment remains suspended. If the Hon’ble HCP agrees to the request, it is unclear as to whether the tax becomes immediately payable, and henceforth immediately recoverable, as the judgment will be suspended, but the issue giving rise to the tax payable will stand

decided per se. In such a situation, if the tax is immediately recovered, then it would be tantamount to frustration of the right to appeal of the taxpayer, and it is unclear as to whether the same may constitute contempt of court.

The triggering event for a tax becoming immediately payable under the newly introduced Section 138(3A) is when the “issue giving rise to the tax payable is decided by a High Court or Supreme Court of Pakistan”. It is unclear as to how this will impact situations in which a bulk of taxpayers file constitutional / Writ Petitions become the Hon’ble HCP that are decided against the Petitioners. For the Petitioners, it seems to be clear that the tax may be immediately payable and hence immediately recoverable as per the corresponding amendment / introduction of Section 140(6A) of the ITO.

However, for those taxpayers that have not challenged the vires of the provision of the ITO, it is possible that the department may finalize assessment Orders and pass Orders accordingly in a hurried manner and immediately recover the said tax as the issue may already have been decided by the Hon’ble HCP. This can frustrate the taxpayer’s right to Appeal, especially in cases where there are jurisdictional defects in the audit proceedings or amendment of assessment Order.

There may also be cases in which the department passes Orders in a slipshod manner, and proceeds to recover the tax without actually giving the taxpayer a fair hearing at assessment stage. In which case, proper adjudication would not have occurred allowing said taxpayer to raise arguments specific to his case. This may open the floodgates of litigation.

- The income tax authority has been given wide discretionary powers to prescribe a time by which the tax becomes payable, and recoverable under Section 140(6A). This opens the door for corruption and heavy handedness as the tax is either immediately payable and recoverable or unless or in a timeframe in which the officer determines it to be payable and recoverable.
- This amendment seeks to override the judgment of the Hon’ble Islamabad High Court in W.P 2622 of 2022 titled as [Pakistan LNG Limited vs Federation of Pakistan & Other](#) wherein it was held that a reasonable timeframe u/s 138 within which tax was supposed to be paid was not less than 7 days, and that a fresh recovery notice u/s 138(1) must be issued by the FBR after an appellate authority (including a High Court) dismisses a taxpayer’s appeal before the FBR can resort to coercive recovery measures under Section 138(2) or Section 140 of the ITO (Reference: Paragraph 19 of the judgment).

- Section 138(3A) of the ITO does not contain the words “for the time being in force”, therefore, the said Section may only override any other provision of the Ordinance or any other law or any rule, any decision or judgment of any court, forum or authority, that is present at the time this amendment has been introduced. It is possible that any subsequently enacted provision in the ITO or any other law or any rule, any decision or judgment of any court, forum or authority, that comes after it may override the said Section 138(3A) of the ITO as the “static approach” may be applied instead of the ambulatory approach.

- Section 138(3A) is a violation of the taxpayer’s right to a fair hearing as enshrined under Article 10A of the Constitution of Pakistan 1973 (“Constitution”). It frustrates the right of appeal available to a taxpayer to file an Appeal before the Hon’ble SCP. Further, it also seems to frustrate the taxpayer’s right to first and second appeal where the issue giving rise to the tax payable is decided by a High Court or Supreme Court in another case, by making the tax to be immediately payable and recoverable.

B. Section 140 – Recovery of tax from persons holding money on behalf of a taxpayer

The following new sub-section (6A) has been added to Section 140:

Quote

Notwithstanding anything contained in this Ordinance or any other law or any rule, any decision or judgment of any court, forum or authority, the tax payable under any assessment order shall become immediately **recoverable** or within the time specified in the notice issued by the income tax authority under this sub-section irrespective of the time provided under any other provision or the said decision or judgment, in case the issue giving rise to the tax payable is decided by a High Court or Supreme Court of Pakistan.

Unquote

Comments:

- This is a corresponding amendment in conjunction with Section 138(3A).
- All comments issued with respect to Section 138(3A) shall apply to this amendment as well.

C. Section 175C Posting of officer of Inland Revenue

The following new Section 175C has been added:

Quote

Subject to such conditions and restrictions, as deemed fit to be imposed, the Board or the Chief Commissioner, may post an Officer of Inland Revenue or such other officials with any designation working under the control of the Board or the Chief Commissioner, to the premises of any person or class of such persons, to monitor production, supply of goods or rendering of or providing of services and the stock of goods not sold at any time.

Unquote

Comments:

- A similar provision (Section 40B) is present in the Sales Tax Act 1990. However, that is restricted to registered persons and monitoring of taxable goods under the STA. This amendment in the ITO has given broad powers to the Board or Chief Commissioner to post any officer or other official on the premises of **any person** to monitor production, **supply of goods** (even those goods that are exempt from sales tax by operation of primary legislation (Section 13) or delegated legislation (SRO, Notification etc)).

Further, a similar provision (Section 54(1)) is present in the Sindh Sales Tax on Services Act 2011 ("SSTSA"), which allows the SRB Board to post an officer of the SRB to the premises of a registered person(s) or class of such persons to monitor the provision of services by such registered person(s). Again, compared to the SSTSA, the newly introduced Section 175A is broader in that it applies to any person(s).

- Now the officer posted shall also be at liberty to monitor production of all goods and services being provided even if they are not registered under the STA or SSTSA. This means that the FBR will now be empowered with more information than before in conducting sales tax audits.
- The powers are against the foundational self-assessment scheme of the ITO and will be prone to litigation on the plea of discrimination.

- It seems that this amendment might have been introduced in light of the ad-interim Orders issued by the Hon'ble Islamabad High Court, in various cases, including the case of ***Jadeed Feeds Industries v/s Federation of Pakistan and Others in W.P No. 1426 of 2025***, wherein the FBR has been barred to post officers to premises where the taxpayer does not produce taxable supplies, so that the power to post officers to premises even where no taxable supplies are being produced, can be exercised under the ITO as opposed to the STA.

AMENDMENTS TO THE FEA

D. Section 26 – Power to Seize

The following words have been added after the word “thereunder” in Section 26(1) of the FEA:

Quote

or such goods without affixing or affixing counterfeit tax stamps, bar codes, banderoles, stickers, labels or bar codes, as required under section 45A of this Act.

Unquote

Comments:

- Through this amendment, goods that don't contain (as required u/s 45A of the FEA), or contain counterfeit, tax stamps, barcodes, banderoles, stickers, labels, or barcode shall now be liable to seizure. This is a good and positive development.

E. Section 27(1) – Confiscation of goods subject to FED

A corresponding amendment has been made in Section 27(1), which gives statutory power to confiscate and destroy goods that don't contain (as required u/s 45A of the FEA), or contain counterfeit, tax stamps, barcodes, banderoles, stickers, labels, or barcode, in the manner provided under Section 19(10) of the FEA.

F. Section 27(4) – Confiscation of goods subject to FED

A new sub-section (4) has been added by the Ordinance as under:

Quote

(4) Without prejudice to the foregoing provisions of this section, the Board in case of goods subject to monitoring under section 45A of this Act and counterfeited goods, may authorize any officer or employee of the Federal or Provincial Government to exercise the powers and perform the functions of the Officer of Inland Revenue under section 26 and sub-section (1) of section 27, by notification in the official Gazette subject to such conditions, if any, it may deem fit to be imposed.

Unquote

Comments:

- This amendment empowers an Officer of the Inland Revenue to seize, confiscate and destroy goods u/s 26 and Section 27(1).

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