



YOUSUF ADIL

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COMMENTS ON THE TAX LAWS (AMENDMENT) ORDINANCE, 2025



Foreword



This memorandum contains our comments in respect of the Tax Laws (Amendment) Ordinance, 2025, promulgated by the President of Pakistan on May 2, 2025, introducing new provisions under the Income Tax Ordinance, 2001 and Federal Excise Duty Act, 2005, with the aim to empower the tax authorities for immediate recovery of income tax demands, when the underlying issues involved are decided by the higher courts, and to enhance FBR powers of enforcement.

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Income Tax Ordinance, 2001

1. Section 138(3A)

This newly inserted sub-section stipulates that where a tax liability arises under *any provision or assessment order* and the issue giving rise to the tax liability has been decided by a High Court or the Supreme Court of Pakistan, such tax becomes immediately payable or within the time specified in a notice issued by the income tax authority notwithstanding any other provision of law or any contrary decision of any court or authority.

2. Section 140(6A)

Similarly, this amendment makes tax assessed under an order immediately recoverable once the underlying legal issue has been decided by a High Court or the Supreme Court, regardless of any provisions in the Ordinance or any decision of a court or authority that might otherwise delay recovery.

Tax liability arising under any provision -

As a consequence of the insertion of these provisions, where a tax liability arises under any provision (e.g. section 4B, 4C or 7E) and the issue is decided by the higher courts giving rise to the tax liability then the tax would immediately become payable for all the taxpayers who are impacted by that provision of law.

Tax liability arising as a result of assessment order -

Whereas in a case where the tax liability arose due to an assessment order and the issue is decided by the higher courts, then the tax would become payable within the time as specified under the notice issued to the taxpayer under section 138. Similarly, the tax authorities would be empowered to recover such tax within the time as specified in the notice issued under section 140. Such recovery can be made regardless of any provisions in the Ordinance or any decision of a court or authority that might otherwise delay recovery.

These amendments are intended to streamline the recovery process by removing procedural delays caused by appeals or stay orders on legal issues already conclusively settled by the superior judiciary and aim to discourage unnecessary prolongation of disputes over

settled matters and prevent abuse of appellate remedies to defer payment.

While this seems to help FBR implement settled law uniformly and without delay and to help in reducing backlog in litigation by narrowing down issues open for appeal but at the same time this grants wide discretion to tax authorities, which may be misused in borderline or fact-specific cases.

The non obstante clause overrides other provisions and decisions, raising issues of due process and judicial independence. May conflict with Article 10A of the Constitution (right to a fair trial).

These amendments reflect the government's drive toward efficient revenue mobilization, but must be balanced against taxpayer rights and constitutional guarantees. Their successful implementation will depend on fair and transparent enforcement supported by judicial oversight and administrative accountability.

3. Posting of Officer of Inland Revenue - Section 175C

The newly inserted section empowers the Board or the Chief Commissioner to 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.

The primary objective of inserting Section 175C aims to combat tax evasion by large businesses engaged in manufacturing, trading, or service sectors who underreport sales, stock, or services by strengthening monitoring and enforcement of income tax compliance through real-time oversight. The idea is to ensure documentation of actual economic activities that may otherwise be under-declared or off-the-books and to provide tax authorities with first-hand insight into business operations, helping in more accurate assessments.

However, constant presence of tax officials at business premises may be perceived as intrusive and could disrupt daily operations and

would raise concerns of harassment, undue influence, or abuse of power in the absence of proper safeguards.

Deploying officers to multiple business premises across the country would require significant investment by FBR in human resources and infrastructure and the sustainability and effectiveness would depend heavily on the capacity and training of tax staff. Further, the provision gives wide discretion to the FBR/Chief Commissioner without defining the criteria for selection, duration of posting, or mechanisms for redressal of grievances. Absence of procedural rules could lead to arbitrary or discriminatory application.

While the intent aligns with revenue mobilization and improved compliance, the implementation must balance enforcement with fairness, privacy, and business confidence. A transparent framework and taxpayer protections are critical to avoid unintended consequences.

Recommendations / Safeguards

- FBR may issue SOPs or SROs clearly defining:
 - Sectors/criteria for selection.
 - Functions and powers of posted officers.
 - Duration and periodicity of posting.
 - Mechanism for taxpayer appeals and complaints.
- FBR must ensure data privacy, non-interference in operations, and periodic review of actions taken by posted officials.
- FBR should consider use of technology-based monitoring tools as alternatives to physical deployment where feasible.

Federal Excise Act, 2005

The amendments introduced in the Federal Excise Act, 2005 (FE Act) aim to strengthen enforcement mechanism over excisable goods through stricter penalties, including confiscation, for non-compliance with affixation requirements prescribed under Section 45A. The said section empowers the Board to implement electronic or other mechanism to monitor or track production, sales, clearance, stocks, etc. of specified registered persons or goods.

Power to seize - Section 26

Section 26 of the FE Act provides for the seizure of the counterfeited cigarettes or beverages which have been manufactured or produced unlawfully, and other dutiable goods on which duty of excise has not been paid, along with the conveyance used for the transportation of such goods. The Ordinance now extends the scope of section 26 and now seizure of such goods is also required which are cleared/sold without affixing or affixing counterfeit tax stamps, bar codes, banderoles, stickers, labels or bar codes, as required under section 45A of the FE Act.

Confiscation of goods subject to federal excise duty - Section 27

Sub section (1) of section 27 of the FE Act previously required the confiscation and destruction of cigarettes or beverages seized due to counterfeiting. Through amendment in said sub section, the same treatment can now be made with such goods which are cleared/sold without affixing or affixing counterfeit tax stamps, bar codes, banderoles, stickers, labels or bar codes, as required under section 45A of the FE Act.

Newly inserted sub-section (4) in section 27 empowers the Board, in respect of goods subject to monitoring under section 45A of FE Act and counterfeited goods, to 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 of the FE Act, by notification in the official Gazette.

This amendment purports to authorize other law enforcement and administrative agencies as well to take action against violation as stated above.

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