

Government of Pakistan
(Revenue Division)
Federal Board of Revenue

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Circular No. 02 of 2010
Income Tax

Subject: **Clarifications regarding amendments brought in the Income Tax Ordinance, 2001 through Finance (Amendment) Ordinance, 2009**

Salient features of the amendments brought in the Income Tax Ordinance, 2001, through Finance (Amendment) Ordinance, 2009 are explained as under:-

1. **Nomenclatures.**

- (i) As a prerequisite for introduction of integrated and uniform administration of the three domestic taxes, the nomenclature of the authorities under the Income Tax Ordinance, 2001, Sales Tax Act, 1990 and Federal Excise Act, 2005 has been changed for uniformity. The following designations of the tax authorities have been adopted:-

Income Tax Appellate Tribunal	Appellate Tribunal Inland Revenue
Directorate General of Income Tax and Sales Tax	Chief Commissioner Inland Revenue
Commissioner Income Tax	Commissioner Inland Revenue
Commissioner Income Tax (Appeals)	Commissioner Inland Revenue (Appeals)
Additional Commissioner Income Tax/Taxation Officer	Additional Commissioner Inland Revenue
Deputy Commissioner Income Tax/Taxation Officer	Deputy Commissioner Inland Revenue
Assistant Commissioner Income Tax/Taxation Officer	Assistant Commissioner Inland Revenue
Income Tax Officer/ Taxation Officer	Officer of Inland Revenue
Special Officer Income Tax/Taxation Officer	Special Officer Inland Revenue

In order to designate Inspector as an authority under the Ordinance, new authority "Inspector Inland Revenue" has been introduced.

- (ii) Director General (RTO/LTU) has been re-designated as Chief Commissioner Inland Revenue and defined through a new clause (11B) inserted under section 2 of the Income Tax Ordinance, 2001.

2. **Default Surcharge.**

The rates of default surcharge under the Sales Tax Act, 1990, Federal Excise Act, 2005 and Additional Tax under the Income Tax Ordinance, 2001 have been harmonized through amendments by the Finance Act 2009. Since the nature of Additional Tax and Default Surcharge under the respective enactments is the same, therefore, for harmonization, the expression "Additional Tax" wherever occurring in the Income Tax Ordinance, 2001 has been changed to "Default Surcharge". The provisions regarding levy/charge and rate of 'additional tax' which shall now be called 'default surcharge' remain the same.

3. **Amendment in Return Filing Regime [Section 114(6) & (6A)].**

Through amendments in section 114 revised income tax return filing has been liberalized and an option has been made available to a taxpayer to file revised return voluntarily, at any stage of the proceeding, alongwith the payment of amount of tax involved, amount of default surcharge and payment of penalties at reduced scales -

- (i) A taxpayer, on discovery of any discrepancy in the original return, can file revised return accompanied with revised accounts alongwith duly signed reasons for such revision of return, payment of short paid tax or amount of tax sought to be evaded and payment of default surcharge. If such voluntary revision is made *before* receipt of notice under section 177(9), *no penalty* shall be recoverable in such voluntary revision.
- (ii) In case a taxpayer opts to revise his return voluntarily and pay tax demand during the process of audit (before issuance of notice of amendment), tax demand alongwith the amount of default surcharge and only *twenty five percent* of leviable penalties are required to be paid in case of such voluntary revision.
- (iii) In cases of such voluntary revision of return *after* issuance of notice of amendment, alongwith payment of the amount of tax sought to be evaded and the amount of default surcharge. Only *fifty percent* of the penalty leviable, is required to be paid in such a situation.

In case of such voluntary filing of revised returns and payments of the amount of tax sought to be evaded, amount of penalties and the amount of default surcharge, as mentioned above, audit proceedings shall come to an end.

4. **Provisional Assessment [Sections 122C and 116(2A)].**

Newly added provisions of sub-sections (1) and (2) of section 122C are aimed at facilitation of a taxpayer where he fails to file return of income in response to requisition of the same by the Department. Under the new scheme of provisional assessment, in such cases of non-compliance, option shall be vested with the taxpayer even after finalization of (best judgment provisional assessment) to file a return within a period of sixty days of the service of demand notice resulting from provisional assessment. Such provisional assessment shall cease to have any legal effect if the taxpayer files return of income alongwith wealth statement, wealth reconciliation statement and other required documents, within a period of sixty days from the date of service of provisional assessment order. However, a return filed in response to provisional assessment shall be valid only if accompanied with wealth statement, wealth reconciliation statement and explanation regarding sources of assets in question. However, if the taxpayer fails to file return of income even after a period of sixty days of receipt of the demand notice resulting from a best judgment provisional assessment, such assessment shall attain finality on completion of a period of sixty days from the date of service of assessment order.

5. **Period for Payment of tax as result of provisional Assessment [Section 137].**

Through insertion of a proviso to sub-section (2) of section 137, sixty days time period, starting from the date of service of notice has been prescribed for payment of tax demand resulting from a provisional assessment.

6. **Period for Maintenance of Record [Section 174(3)].**

Time period for maintenance of records has been elaborated through these changes:

- (i) A taxpayer is required to maintain records for a period of six years. This period of six years runs from the start of the latest tax year to the end of sixth previous tax year. This amendment has been made to ensure maintenance of tax records for previous five tax years at any given time.
- (ii) In cases where any proceedings are pending before any authority or Court (either on behalf of the taxpayer or the department), including proceedings for assessment or amendment of assessment, appeal, revision, reference, petition or prosecution or any proceeding before an

Alternate Dispute Resolution Committee, record is required to be maintained till final decision of the proceedings.

7. **Changes in Audit Selection Regime [Section 177(1),(2),(3),(4),(5),(7)&10].**

In line with the audit selection regime under the Sales Tax law, existing criteria based audit selection regime has been substituted with a simplified, streamlined and case specific audit selection procedure whereby a taxpayer is empowered to participate in the process of selection of his case for audit by producing records, documents and books of accounts/electronic records/data, at a stage even prior to the selection of the case for audit. The Commissioner can call for and examine taxpayer's records, documents and books of accounts (including electronic records/data) pertaining to a tax year within the limit of six years which start from the end of six years from the end of the tax year to which they relate –

- (i) Substituted sub-section (1) empowers the Commissioner to requisition taxpayer's records or documents including books of accounts (manual or electronic) required to be maintained under Income Tax Ordinance, 2001, as well as by any other law, for conducting audit of the income tax affairs of a person.
- (ii) Substituted sub-section (2) requires the Commissioner to conduct audit after calling for any other information and documents pertaining to the taxpayer or to any other person.
- (iii) Newly introduced sub-section (10) allows the Commissioner or the firm of Chartered Accountants or Management Accountants (as the case may be), in case where accounts are not produced by the taxpayer on requisition, to finalize the case by making best judgment assessment.

8. **Appointments of Special Judges [Section 203(1)(1A)(1B) and (3)].**

Through these amendments, Federal Government is empowered to appoint as well as transfer, as many Special Judges (equal to the status and standing of a sessions judge) as considered necessary, for trial in cases of any offence under the Income Tax Ordinance, 2001, under the provisions of Code of Criminal Procedure, 1998 (Act V of 1998 – except Chapter XXXVIII of the Code). A person conducting prosecution before the court of a Special Judge shall be deemed to be a Public Prosecutor.


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