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A Brief on Bill for Tax Laws (Amendment) Act, 2024

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Executive Summary

The Tax Laws (Amendment) Act, 2024 [the **Bill**] has been proposed to the National Assembly with the intention of making changes in the Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Federal Excise Act, 2005 that intend to curb certain economic transactions by persons not registered for tax.

However, some key new sections proposed will not be applicable until these are notified by the board. This step appears to nudge businesses for proper tax registration. The implementation will remain a challenge due to lack of consistency and clarity.

The key changes include:

Income Tax Ordinance, 2001

- The Bill proposes to introduce the concept of ineligible person who shall not be allowed to purchase a motor vehicle, immovable property and securities.
- The Bill proposes to also bar persons notified by the Board from opening a bank account, operating an already opened bank account or securities account or to withdraw money from a bank account above the limit specified by the Board.
- The Bill proposes to allow the Board to share information related to turnover, income, identification data along with data based algorithms of persons with scheduled banks and require them to share name and account numbers of such persons whose banking information is at variance from the data algorithms.
- The Bill proposes to empower the Board to appoint as many auditors as it deems fit, through direct engagement or through a third party, for carrying out the purposes of the Income Tax Ordinance, 2001 [the **Ordinance**].

Sales Tax Act, 1990

- The Bill proposes to introduce limits on sales tax input where the Board deems fit by using a “data based risk management system”. This term has however been not elaborated or defined.
- The Bill proposes to empower the Commissioner Inland Revenue to bar operating of bank accounts or transfer of property of any unregistered person who is not registered for sales tax.
- The Bill also proposes to empower the Commissioner Inland Revenue to seal the business premises, seize immovable property or appoint a receiver for management of taxable activity of any unregistered person who is not registered for sales tax, after the prescribed process is followed.
- The Bill proposes a new section that empowers the Board or the Commissioner Inland Revenue to appoint as many experts or auditors as they deem fit, through direct engagement or through a third party, to assist the authorities in audit, investigation, litigation or valuation.
- Input tax credit attributable to unregistered persons is currently allowed up to Rs. 100 million in a financial year or Rs. 10 million in a tax period. This is proposed to be allowed as per limit to be prescribed by Sales Tax General Orders.

Income Tax Ordinance, 2001

Restriction on economic transactions by certain persons (New section 114C)

In order to bar persons having undeclared sources of income from carrying out certain economic transactions, the Bill has proposed to introduce the concept of an eligible person who is defined as "a person who has filed the return of income for the tax year immediately preceding the year of transaction (i.e. the economic transaction that the person wants to carry out) 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. Provided that in case of an individual, the eligible person shall include his immediate family members".

A person who is not an eligible person is defined as an **ineligible** person.

Sufficient resources have been defined 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 persons cash and equivalent assets, declared in the financial statements attached with the income tax return for the latest tax year".

The proposed law lacks clarity and this may hamper its smooth implementation.

The Bill proposes that:

1. Any application, by any ineligible person, for booking, purchase or registration of a motor vehicle, shall not be accepted or processed by any manufacturer of a motor vehicle or vehicle registering authority of Excise and Taxation Department, as the case may be.
2. Any application or request by any ineligible person, 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 by such authority. The limit of immovable property that can be purchased by ineligible person has not need notified yet.
3. 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 association of persons.

The Bill also proposes that a banking company shall:

1. Not open or maintain an already opened current or a saving bank or investor portfolio securities account, except Asaan account, in the name of such persons as may be notified by the Board; and
2. Not allow cash withdrawal from any of the bank accounts of any person, exceeding the amount as may be notified by the Board from time to time. This limit is not notified yet.

However, the limits proposed by the Bill on these economic transactions will not be applicable to:

1. Purchase of rikshaws or motorcycle rikshaws or tractors;
2. Purchase of a pickup vehicle having engine capacity up to 800 CC;
3. Purchase of such motor vehicles other than those mentioned above including trucks and buses subject to restrictions and limitations as may be notified by the Board from time to time;

4. Investment in securities up to such limit as may be notified by the Board from time to time;
5. Any ineligible person who after filing his return of income for the latest completed tax year, has filed sources of investment and expenditure statement; and
6. Transactions made by a non-resident person or a public company except the cash withdrawal limits as notified by the Board.

It is important to note that several limits need to be prescribed by the Board and are not clear yet. In addition, the actual mechanism of how the prescribed persons, banks and authorities mentioned above will be able to implement these limitations to stop the transactions is also not clear. The proposed measures seem a step in the right direction for the documentation of economy but the absence of notified limits, clarity in law and the actual mechanism of implementation has historically led to more chaos and failure in achieving the desired objectives.

Exchange of banking and tax information related to high-risk persons (New section 175AA)

The Bill proposes that the Board may 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.

The Bill then proposes that the scheduled banks shall provide to the Board particulars, such as name, account numbers of such persons where the banking information is at variance with the data algorithms provided.

The Bill proposes that all information received under this section shall be used only for tax and related purposes and kept confidential.

However, there is no clarity on the persons or class of persons as well as the algorithms that will be used for this.

Appointment of auditors

By amending section 222, the Bill proposes to empower the Board to appoint as many auditors on contractual basis or through a third-party arrangement, as the case may be, as it deems fit for carrying out the purposes of the Ordinance.

Such auditors are proposed to be included in the list of Income Tax Authorities as prescribed in section 207 of the Ordinance, as well as for the purposes of information under section 216 of the Ordinance.

Sales Tax Act, 1990

Use of automated risk management system for input restrictions

Section 8B of the Sales Tax Act 1990 [Act] prescribes that a registered person shall not be allowed to adjust input tax in excess of 90% of the output tax for the related tax period.

The sub-section 4 also empowers the Board to prescribe any other limit of input tax adjustment for any person or class of persons.

The Bill proposes that in order to limit input tax allowance as above, the Board may also use data based automated risk management system to defer certain input tax or fix higher or lower limits of input tax adjustment.

The Bill proposes that the registered person may contest such action related to deferring / limiting the input tax by filing application and documents with the Commissioner who shall decide the case within 60 days of such application.

Restriction on operations of Bank Accounts (New section 14AC)

The Bill proposes that:

- The Commissioner shall have the powers to direct banking companies, scheduled banks and other financial institutions, through an order in writing, to bar operation of the bank account of any person who fails to get registered for the purposes of the Act.

- Upon registration of such person, the Commissioner shall issue and convey order for removal of bar on operation of his bank accounts not later than two working days.

- The person aggrieved by the order barring operation of the bank account can file an appeal with the Commissioner within 30 days.

However, these provisions are not proposed to be effective immediately but on such date as the Board may notify in the official GazetteThe intent again appears to nudge businesses for tax registration.

Restriction on transfer of immoveable property (New section 14AD)

The Bill proposes that:

- The Commissioner shall have the powers to direct property registering authority, through an order in writing, to bar transfer of immoveable property of any person who fails to get registered for the purposes of the Act.

- Upon registration of such person, the Commissioner shall issue and convey order for removal of bar on transfer of immoveable property not later than two working days.

- The person aggrieved by the order barring transfer of immoveable property can file an appeal with the Commissioner within 30 days.

However, these provisions are not proposed to be effective immediately but on such date as the Board may notify in the official Gazette.

The intent again appears to nudge businesses for tax registration.

Other coercive actions for non-registration (New section 14AE)

The Bill proposes that:

1. The Chief Commissioner shall have the power to:

   - Seal the business premises,

   - Seize moveable property; or

   - Appoint a receiver for the management of the taxable activity of a person.

2. Action under this section shall not be carried out, unless:

- A public notice is issued specifying the date from which the premises shall be sealed, or movable property is attached, or a receiver is appointed for the management of the taxable activity.

- A committee comprising the Chief Commissioner, the Commissioner concerned, and a representative from the Chambers of Commerce or Trade Bodies, provides an opportunity of being heard to the person through an open court; and

- Such decision is made public by placement on the Board's website and newspaper as well.

3. Upon registration of such person, the Chief Commissioner shall issue and convey order for removal of receiver appointed not later than two working days.

   However, the proposed section is silent as to removal of seal from business premises or seizer of immoveable property upon registration by the person.

4. The person aggrieved by the order under this proposed section can prefer a representation before the Board within 30 days.

However, these provisions are not proposed to be effective immediately but on such date as the Board may notify in the official Gazette.

The intent again appears to nudge businesses for tax registration.

Appointment of experts and auditors

The Bill proposes to empower the Board or the Commissioner to appoint as many experts as considered necessary for the purposes of the Act, including for the purposes of assistance in audit, investigation, litigation or valuation.

The Bill further proposes that the Board may appoint as many auditors as it may deem fit, through direct engagement or through a third party including a pay roll firm for the purposes of the Act and confer such powers as may be deemed necessary to assist the authorities under the Act or Excise Act, 2005 [**Excise Act**] as per the terms, conditions, limitations and restrictions as may be prescribed.

The Bill also proposes that the restriction of information by a public servant under section 56B of the Act shall equally apply to such experts and auditors.

Restriction on input tax on taxable supplies to unregistered persons

Currently, in terms of section 73(4) of the Act, a registered person is not entitled to deduct input tax attributable to such taxable supplies exceeding, in aggregate, Rs. 100 million in a financial year or Rs. 10 million in a tax period made to an unregistered person.

The Bill proposes that input tax credit attributable to unregistered persons be allowed as per the limit prescribed to a sales tax general order.

However, these provisions are not proposed to be effective immediately but on such date as the Board may notify in the official Gazette.

Federal Excise Act, 2005

Power to seize products

Section 26 of the Excise Act provides that counterfeited cigarettes or beverages produced unlawfully or other dutiable goods on which duty has not been paid in the manner required under the Excise Act shall be liable to seizure.

The Bill proposes that the dutiable goods without affixing or affixing counterfeited tax stamps, banderoles, stickers, labels or barcodes, as required under section 45A of the Excise Act for monitoring or tracking by electronic or other means also be made liable to seizure.

Confiscation of products

Section 27 of the Excise Act provides that cigarettes or beverages seized under section 26 of the Excise Act shall be liable for confiscation and shall be destroyed.

The Bill proposes that the dutiable goods without affixing or affixing counterfeited tax stamps, banderoles, stickers, labels or barcodes, as required under section 45A of the Excise Act for monitoring or tracking by electronic or other means also be made liable to such confiscation and destruction.

The Bill further proposes that the Board, in case of goods subject to monitoring under section 45A of the Excise 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 Officer of Inland Revenue under section 26 and section 27 of the Excise Act by notification in the official Gazette subject to such conditions, if any, that it may deem fit to impose.

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