

**COMMENTS ON AMENDMENTS PROPOSED VIDE FINANCE BILL 2010
IN THE FEDERAL EXCISE ACT, 2005**

1. The restructuring of the Federal Board of Revenue renders the merger of jurisdictions of the Income Tax, Sales tax and Federal Excise Departments which leads the promulgation of Finance Amendment Ordinance, 2002. To harmonize the functions and powers of the merged departments under newly constituted department the term “Inland Revenue” has been introduced so far.

The bill seeks to ratify the amendments already implemented by the Federal Board of Revenue through Finance (Amendment) Ordinance 2009 w.e.f. February 06, 2010.

<u>Section</u>	<u>Adjudicating Authority before amendment</u>	<u>Adjudicating Authority after amendment</u>
2(3)	Federal Excise Appellate Tribunal	Appellate Tribunal Inland Revenue established under Section 130 of the Income Tax Ordinance, 2001 (XLIX of 2001)
4(4)	Collector of Federal Excise	Commissioner Inland Revenue
2(12)	Federal Excise Officer	Officer of Inland Revenue
9(2)	Collector	Commissioner
14(2)	Federal Excise Officer	Officer of Inland Revenue
19(2a & c)	Federal Excise Officer	Officer of Inland Revenue
19(4)	Collector	Commissioner
19(6)	Federal Excise Officer	Officer of Inland Revenue
19(10)	Collector	Commissioner
21(4)	Federal Excise Officer	Officer of Inland Revenue
22(1,5,6,7,8,10 11,13 & 14)	Federal Excise Officer Collector	Officer of Inland Revenue Commissioner
23(1)	Federal Excise Officer	Officer of Inland Revenue



24	Federal Excise Officer	Officer of Inland Revenue
27(3)	Collector	Commissioner
29(3)	Collector of Federal Excise	Commissioner Inland Revenue
	Additional Collector of Federal Excise	Additional Commissioner Inland Revenue
	Deputy Collector of Federal Excise	Deputy Commissioner Inland Revenue
	Assistant Collector of Federal Excise	Assistant Commissioner Inland Revenue
	Officer of Federal Excise	Officer of Inland Revenue
30(2)	Federal Excise Officer	Officer of Inland Revenue
33(Heading) (1, 2 & 3)	Collector	Commissioner
33(1)	Federal Excise Officer upto the rank of Additional Collector of Federal Excise	Officer of Inland Revenue upto the rank of Additional Commissioner Inland Revenue
34(1) (a)	Federal Excise Officer Collector	Officer of Inland Revenue Commissioner
(b)	Collector of Federal Excise	Inland Revenue
34(3)	Any officer of Federal Excise not below the rank of Additional Collector Authorized By the Collector	Any officer of Inland Revenue not below the rank of additional Commissioner authorized by the Commissioner
34(9) (Proviso)	Additional Collector authorized by the Collector	Additional Commissioner authorized by the Commissioner
	Authorizing the Collector	Authorizing the Commissioner
34(12)	Additional Collector authorized by the Collector	Additional Commissioner authorized by the Commissioner
34(13)	Collector	Commissioner



35 (heading)	Collector	Commissioner
35(1)	Collector	Commissioner
35(3)	Federal Excise Officer	Officer of Inland Revenue
36(1)	Federal Excise Officer	Officer of Inland Revenue
37(1, 2 & 3)	Collector (Appeals)	Commissioner ((Appeals)
38(2)	Any officer of Federal Excise not below the rank of Additional Collector	Any officer of Inland Revenue not below the rank of additional Commissioner
43(2)	Collector Federal Excise Officer	Commissioner Officer of Inland Revenue
44(2)	Collector	Commissioner
(Proviso)	Collector & Officer of Federal Excise	Commissioner & Officer of Inland Revenue
45(1)	Federal Excise Officer	Officer of Inland Revenue
45(2)	Federal Excise Officer	Officer of Inland Revenue
(Proviso)	Federal Excise Officer Collector	Officer of Inland Revenue Commissioner
46(1)	Federal Excise Officer	Officer of Inland Revenue
46(2)	Collector Federal Excise Officer Assistant Collector	Commissioner Officer of Inland Revenue Assistant Commissioner
Third Schedule Table-I Column 2 Paragraph (iii) (b)	Collector of Federal Excise	Commissioner Inland Revenue

2. Definition of Chief Commissioner **Section 2(4A)**

The Bill seeks to insert the definition of “Chief Commissioner” in the Federal Excise Act, 2005 as “a person appointed as the Chief Commissioner Inland Revenue under section 29”. This term harmonizes the higher administrative authority for the three domestic taxes i.e., income tax, sales tax and federal excise duty.

3. Appointment of Commissioner Inland Revenue **Section 2(5)**

The Bill Seeks to ratify the appointment of Commissioner Inland Revenue by the board instead of Collector as defined under section 29 of the Act to harmonize the administrative authority for the three domestic taxes i.e., income tax, sales tax and federal excise duty.

4. Record **Section 17(1)**

The registered person is required to maintain and keep the record for a period of five years under the Federal Excise Act 2005.

The bill proposes to maintain and keep the record for a period of six years or till the final decision of any proceedings including proceeding for assessment, appeal, revision, reference, petition and any proceeding before an Alternate Dispute Resolution Committee.

5. Appointment of Inland Revenue Officers **Section 29**

The Bill seeks to authorize the Board for appointment and delegation of powers of the following Adjudication Authorities:

- (a) Chief Commissioner Inland Revenue;
- (b) Commissioner Inland Revenue;
- (c) Commissioner Inland Revenue (Appeals);
- (d) Additional Commissioner Inland Revenue;
- (e) Deputy Commissioner Inland Revenue;
- (f) Assistant Commissioner Inland Revenue;
- (g) Inland Revenue Officer;
- (h) Superintendent Inland Revenue;
- (i) Inspectors Inland Revenue;
- (i) Inland Revenue Audit Officer; and
- (k) Officer of Inland Revenue with any other designation.

6. Delegation of powers Section 29 (1A), (1B) and (1C)

The bill proposes to insert these subsections in order to provide the hierarchy of the adjudicating authorities.

7. Powers of Commissioner Inland Revenue Section 29 (4)

Due to insertion of subsection (1A), (1B) and (1C), this subsection seems to be superfluous so the bill proposes to delete this sub-section.

8. Powers of Adjudication Section 31

The hierarchy of the powers of adjudicating authorities has been fixed in section 29 above; therefore, this section seems to be superfluous, hence, proposed to be omitted.

9. Appeals to the Appellate Tribunal and Reference to high Court Section 34 (2)

Through the promulgation of Finance Amendment Ordinance 2009, the Custom Department has been separated from the Inland Revenue therefore; this section seems to be superfluous. The Bill proposes to delete this section.

10. Reference to High Court Section 34A

The section 34 of the Act carries the words “Reference to High Court” in its heading but the procedure had not been discussed so far. Now the bill proposes to insert section 34A laid down the procedure and limitation for filing a reference to the High Court for both the stake holders.

11. Reference to Authorities Section 42A

The bill proposes to insert a new section 42A to provide deeming provision in connection with reference to the Adjudicating authorities to be treated as reference to the reconstituted authorities in anywhere in the Act, rules, notifications, clarifications. General orders or orders made or issued.

12. Selection for audit by the Board section 42B

The purpose of this section is to authorize the board to select persons or classes of persons for audit of records and documents through computer ballot which may be random or parametric as the Board may deem fit.

13. Departmental Audit **Section 46(1)**

As per existing provision the Board was authorized to appoint Officer of inland Revenue to conduct audit of the records and documents of a registered person by giving advance notice in writing.

This bill proposes to give this authority to the Commissioner as well.

14. Departmental Audit **Section 46 (2A)**

By insertion of this section, the officer of Inland Revenue will be authorized to pass an order under section 14 on the basis of audit queries, imposing the amount of duty as per law, charging default surcharge, imposing penalties and recovery of any amount erroneously refunded. But the Officer of Inland Revenue will not be authorized to issue such order without obtaining the prior explanation of registered person on the issues raised in the audit.

15. Departmental Audit **Section 46(3)**

By virtue of proposed insertion of section 46(2A), the bill seeks to deposit the unpaid, short paid, evaded amount of duty alongwith default surcharge during or after the audit but before the determination of such liability by the officer of Inland Revenue.

16. Service of Notices and other documents **Section 47**

By virtue of this amendment the bill seeks to enhance the scope of service of notice and define the procedures and limitations for service of notice in different situations.

To harmonize service of order and decisions of three domestic taxes and to be in line with Income Tax Laws this section has been substituted as follows :

- (1) Subject to this Act, any notice, order or requisition required to be served on a resident individual, other than in a representative capacity, for the purposes of this Act shall be treated as properly served on the individual if:
 - (a) Personally served on the individual or, in the case of an individual under a legal disability or a non-resident individual, the representative of the individual;
 - (b) sent by registered post or courier service to the place specified in clause (b) of sub-section (2) or to the individual's usual or last known address in Pakistan; or



- (c) served on the individual in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (V of 1908).

- (2) Subject to this Act, any notice, order or requisition required to be served on any person, other than a resident individual to whom sub-section (1) applies, for the purposes of this Act, shall be treated as properly served on the person if:
 - (a) personally served on the representative of the person;
 - (b) sent by registered post or courier service to the person’s registered office or address for service of notices under this Act, in Pakistan, or where the person does not have such office or address, the notice is sent by registered post to any office or place of business of the person in Pakistan; or
 - (c) served on the person in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (V of 1908).

- (3) Where an association of persons is dissolved, any notice, order or requisition required to be served under this Act, on the association may be served on any person who was the principal officer or a member of the association immediately before such dissolution.

- (4) Where, business stands discontinued, any notice, order or requisition required to be served under this Act, on the person discontinuing the business may be served on the person personally or on any individual who was the person’s representative at the time of discontinuance.

- (5) The validity of any notice issued under this Act, or the validity of any service of a notice under this Act, shall not be called into question after the notice has been complied with in any manner.

The detail of proposed amendments in the First Schedule is as under:

Table No.	Relevant Entry in Table	Existing		Existing	
		Description	Rate of duty	Description	Rate of duty
1	8	Cigars, cheroots, cigarillos and cigarettes, of tobacco substitutes.	64% of Retail Price	Same	65% of Retail Price
2	9	Locally produced cigarettes if their retail price exceeds nineteen	64% of Retail Price	Same	65% of Retail Price



		rupees and fifty paise per ten cigarettes.			
3	10	Locally produced cigarettes if their retail price exceeds Ten rupees per ten cigarettes but does not exceed nineteen rupees and fifty paise per ten cigarettes.	Four rupees and seventy Five paisas per ten cigarettes plus seventy per cent per incremental rupee or part thereof.	Same	Five rupees and twenty Five paisas per ten cigarettes plus seventy per cent per incremental rupee or part thereof.
4	12	Cigarettes manufactured by a manufacturer who remains engaged on and after the 10th June, 1994, either directly or through any other arrangement, in the manufacture of any brand of cigarette in non-tariff areas.	Sixty Four percent of retail price.	Same	Sixty Five percent of retail price.
5	36	Natural Gas in gaseous state	Five rupees and nine paise per Million British Thermal Unit	Same	Ten rupees per Million British Thermal Unit
6	37	Other petroleum Gases in gaseous state	Five rupees and nine paise per Million British Thermal Unit	Same	Ten rupees per Million British Thermal Unit
7	50	New Insertion	0	Filter rods for Cigarettes	One Rupee per filter rod
8	51	New Insertion	0	Air Conditioners	10 percent ad val.
9	52	New Insertion	0	Deep Freezers	10 percent ad val.

"Restriction.—For the purpose of levy, collection and payment of duty at the rates specified in column (4) against serial numbers 9, 10 and 11, no cigarette manufacturer shall reduce price from the level adopted on the day of the announcement of the Budget 2010-11.";