

# Denying right to justice to taxpayers

In the **Finance Bill, 2021**, a highly lamentable and unconstitutional amendment is proposed to the effect that for availing right to appeal, the aggrieved taxpayer will have to deposit 100 percent of the demand upheld by any appellate authority before exercising the right to appeal to the next available forum under the **Income Tax Ordinance, 2001** [“the Ordinance”]. The adjudicating officers in most of the cases pass harsh, arbitrary, illegal and excessive orders to show performance and/or higher collection. Such orders are quashed at the level of Appellate Tribunal Inland Revenue (ATIR), higher courts and Supreme Court of Pakistan.

The proposed amendment, if adopted, will change section 137 of the **Income Tax Ordinance, 2001** as under (red parts showing amendments proposed):



Ikram ul Haq

## Section 137. Due date for payment of tax

“(2) Where any tax is payable under an assessment order or an amended assessment order or any other order issued by the Commissioner under this Ordinance, a notice shall be served upon the taxpayer in the prescribed form specifying the amount payable and thereupon the sum so specified shall be paid within thirty days from the date of service of the notice:

Provided that the due date for payment of tax payable under sub-section (7) of section 147 shall be the date specified in sub-section (5) or sub-section (5A) or first proviso to sub-section (5B) of section 147:

Provided further that **due date for payment of tax payable specified in sub-section (2) of this section shall not apply** in case of an assessment order passed **under sub-section (1) or sub-section (4) of section 124** of this Ordinance **and that tax payable as a result of order passed under sub-section (1) or sub-section (4) of section 124 shall be payable immediately”**.

## Section 124. Assessment giving effect to an order

“(1) Except where sub-section (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Part III of this Chapter by the Commissioner (Appeals), Appellate Tribunal, High Court, or Supreme Court an assessment order or amended assessment order is to be issued to any person, the Commissioner **shall issue the order within two years from the end of the financial year in which the order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner.**

(4) Where direct relief is provided in an order under section 129 or 132, the Commissioner shall issue appeal effect orders within two months of the date the Commissioner is served with the order”.

Will FBR also pay refund immediately if order is in favour of taxpayer? No such provision is proposed. It becomes almost impossible in majority of the cases to get relief at the first level of appeal. The Commissioners of Appeals of Inland Revenue work directly under the administrative control of the Federal Board of Revenue (FBR). This is against Article 175(3) of the **Constitution of Islamic Republic of Pakistan** [“the Constitution”]. It is elaborated by the Supreme Court of Pakistan in **Government of Baluchistan v Azizullah Memon PLD 1993 SC 31** that “**separation of judiciary from executive is the cornerstone of independence of judiciary**”.

Sub-section (2) of section 137 of the Ordinance provides that where any tax is payable under an assessment or an amended assessment order or any other order issued under the Ordinance, a notice shall be served specifying the amount of tax payable and the sum so specified shall be paid within thirty days from the date of services of notice. **The second proviso intended to be included through Finance Bill, 2021 reproduced above says that time limit of thirty days will not be applicable in case an order is passed in consequence of or to give effect to any findings of any appellate authority and tax shall be payable immediately.**

The proposed amendment, if approved, would be violative of the Constitution—the supreme law of the land. It will also give a free hand to the officers of Inland Revenue Service of FBR to collect 100% of disputed tax demand upheld by the Commissioners of Appeals It will also be in violation of Article 10A of

the Constitution which says: “**For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process**”. Demanding 100% of disputed tax before final adjudication by an independent appellate forum is a gross violation of fundamental right guaranteed by the Constitution of free access to justice.

The right to access to justice is fundamental inalienable and should be unfettered. This right to seek justice is constitutional guarantee [Article 4 & 10A] for every citizen of Pakistan, which the Parliament and/or Government cannot curtail. The Finance Bill, 2021, prepared by a team of FBR approved by the cabinet, exposes their level of competence in understanding the Constitution!

Undoubtedly, the proposed amendment is against the Constitution and binding judgements of Supreme Court and High Court under Article 189 and 201, respectively, that unfettered right of appeal cannot be denied or made conditional. The condition of immediate payment of full disputed tax demand amounts even after appeal effect till the matter has attained finality and stay is obtained amounts to curtailment of fundamental right of citizens and prone to abuse to collect disputed tax through capricious orders creating exorbitant demands. By presenting such amendment, the PTI Government, like its predecessors, has demonstrated disrespect for the supreme law of the land and judgements of the superior courts with impunity.

The Supreme Court in Mehram Ali and Others v. Federation of Pakistan and others PLD 1998 SC 1445, held:



*“That the right of “access to justice to all” is a fundamental right, which right cannot be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution.”*



All judicial/quasi-judicial organs and appellate authorities as a matter of principle and in consonance with the Constitution should be totally separated from the executive to ensure their independence in the true sense of the word.

In seeking justice, no preconditions can be imposed. The contrary amendment suggested in Finance Bill, 2021 should be recalled. Any law repugnant to fundamental right guaranteed in the Constitution is ultra vires and void ab initio.

*The FBR, Ministry of Law and Justice, if vetted it, and the Cabinet have obviously overlooked that in a number of reported cases, such as **Sonia Silk v. CBR 2001 PTD 1789 and Chenab Cement Products (Pvt.) Ltd v Banking Tribunal, Lahore and others** PLD 1996 Lah.672, the superior courts held that condition to deposit a portion of tax to avail the right of appeal, if mandatory, would be violative of fundamental rights of free and unfettered justice guaranteed under the Constitution.*

It is hoped that the PTI Government and all members of opposition in Parliament will take note of the proposed amendment and it will be withdrawn. One hopes that the Attorney General of Pakistan, after reading this article, will advise the PTI Govern-

ment to immediately take remedial measure of withdrawing the proposed amendment, and abide by the Constitution and judgements of the superior courts as narrated above.

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July 10, 2021

