

Special Audit Panels 1177 (1 1) to (17)I

In order to contact the audit, including a forensic audit, of income tax affairs of a person or class of persons the Federal Board of Revenue may appoint as many special audit panels as may be necessary. Other provisions in this regard are as below:

1. The special audit panel shall be comprising two or more members selected from the following persons:
 - i) An officer or officers of Inland Revenue;
 - ii) A firm of Chartered Accountants;
 - iiD A firm of Cost and Management Accountants;
 - iv) Any other person (including a foreign expert or specialist) as directed by the FBR; or
 - v) A tax audit expert deployed under an audit assistance programme of an international organization or a tax authority outside Pakistan.

A person, other than an officer of Inland Revenue, shall only be included as a member in the special audit panel if he has entered into an agreement of confidentiality with the FBR, international tax organization or a tax authority, as the case may be.

2. The scope of such audit shall be as determined by the FBR or the CIR on case-to-case basis.
3. Special audit panel shall be headed by a Chairman who shall be an officer of Inland Revenue.
4. Powers u/s 175 and 176 of the Income Tax Ordinance shall only be exercised by such an officer of Inland Revenue, who is member of the special audit panel and is so authorized by the CIR for the purpose of audit.
5. If any one member of the special audit panel (other than the Chairman) is absent from conducting an audit, the proceedings of the audit may continue. The audit conducted by the special audit panel shall not be invalid or called in question merely on the ground of such absence.
6. Functions performed by an officer of Inland Revenue as members of the special audit panel, for conducting audit, shall be treated to have been performed by the special audit panel.
7. The FBR may prescribe the mode and manner of constitution, procedure and working of the special audit panel.

Special Audit Panel Rules [Rule-231E]

In order to conduct audit (including forensic audit) of the income tax affairs of any person or class of persons the FBR may appoint as many special audit panel as may be necessary out of the persons enumerated above. Other legal provisions in this regard are as below:

1. For this purpose the FBR shall invite firm of Chartered Accountants or Cost and Management Accountants. It shall determine their eligibility and remuneration on case to case basis or some other basis determined by the FBR
2. The scope of audit shall be determined by the CIR on case-to-case basis.
3. The chairperson of the panel shall be responsible for, inter alia, the procedure:
 - i) To decide in consultation with the CIR about the place of the sitting of the panel;

- ri) To specify date and time for conducting audit;
- iii) To supervise the proceedings of audit;
- iv) To issue notices to the taxpayer;
- v) To requisition and produce records, documents, information from the taxpayer and other persons in respect of the taxpayer; and
- vi) To ensure attendance of the taxpayer for hearing in person or through representative.

- 4. If considered necessary, the special audit panel may conduct inquiry or seek expert opinion. Powers to enter and search premises and issue notice to obtain information or evidence (u/s 175 & 176) shall be exercised by officer of Inland Revenue.

- 5. The chairperson shall consolidate audit findings and get signatures of all other members of the panel for further action as per law.

- 6. The findings of the majority members of the panel shall be considered as findings of the panel however if such majority does not include the chairperson, the report of difference of opinion shall be sent to the CIR who may decide either to constitute a new special audit panel or send the said report to another officer(s) of Inland Revenue. The findings under new arrangements would suffice for further action under the law.

- 7. Audit proceedings shall include the taxpayer's record, documents, statements and difference of opinion by previous special audit panel and opportunity of being heard to the taxpayer.

Failure in Producing the Records, Documents, Etc. [177 (10) & (14)]

Where a person fails to produce the record, documents, evidence, etc., as required under the law, the CIR may proceed to make best judgment assessment u/s 121 of the Income Tax Ordinance.

Under such a case the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.

Note: The powers of the CIR u/s 177 are independent of the powers of the FBR u/s 214C and nothing contained in that section restricts the powers of the Commissioner to call for the record or documents including books of accounts of a taxpayer for audit and to conduct audit

under section 177.

SELECTION FOR AUDIT BY BOARD [214C]

The Federal Board of Revenue (FBR) may select persons or classes of persons for audit of income tax affairs. This selection shall be through computer ballot, whether random or parametric, at the discretion of the FBR. The parameters shall be kept confidential.

The persons selected for audit shall be audited as provided in section 177.

Note: The powers of the Commissioner u/s 177 are independent of the powers of the FBR u/s 214C and nothing contained in that section restricts the powers of the Commissioner to call for the record or documents including books of accounts of a taxpayer for audit and to conduct audit under section 177.

CLOSURE OF AUDIT [214E]

The Finance Act, 2015 inserted section 214D to the Income Tax Ordinance, which provided that under certain cases a person was liable to be selected automatically for audit of his income tax affairs. That section was omitted by the Finance Act, 2018.

The Finance Supplementary (Amendment) Act, 2018 inserted section 214B containing conditions under which audit of income tax affairs of a taxpayer [initiated u/s 214D(2)] should be deemed to have been concluded. That too was effective till 31-12-2018.

Being redundant now, the provisions of section 214E are not being discussed.

AUTOMATED IMPERSONAL TAX REGIME 1227D)

For low risk and compliant taxpayers only (as may be prescribed) the FBR may design an alternative impersonal taxation regime whereby personal interaction will be minimized.

The FBR shall also prescribe the procedure in this behalf by notification in the official Gazette.

E-HEARING 1227E)

FBR may design and prescribe e-hearing module for the purpose of conducting hearings, grant opportunity of being heard and electronically receiving any information. FBR may make rule 1 this purpose.

The recording of e-hearing proceedings shall be admissible as evidence before any forum of law for the purpose of the Income Tax Ordinance.

CHAPTER.21

OFFENCES AND PUNISHMENTS

The Income Tax Ordinance, 2001, renders certain actions, omissions, abstinences or defaults as offences and suggests various types of punishments for such defaults. These punishments may be the default surcharge, penalties, prosecutions and imprisonment. This chapter deals with the various defaults under the Income Tax Ordinance and the punishments applicable to such defaults.

DEFAULT SURCHARGE [205, etc.]

Default surcharge is a penalty levied on a taxpayer upon non-payment of any amount of tax or penalty under any provision of the Income Tax Ordinance, 2001. The "table" given below contains a summarized version of the sections dealing with the default surcharge.

Section	Default	Rate	Period	
			From	to
137(6)	Payment of tax in installments.	12o/o pet annum	The due date.	The date of payment.
161(18)	Failure in deduction or payment of tax at source.	12o/o pet annum	The date of default.	The date of payment.
205(1)	Failure in payment of i) Tax other than advance tax and default surcharge; ii) Penalty iii) Tax by a person who holds moneys, etc., on behalf of taxpayer and demanded by CIR u/s 140 iv) Tax by a liquidator as required u/s 141 v) Tax with return u/s 137 (nonpayment or short-payment).	Higher of 12o/o p.a. or Kibor + 3o/o p.a.	Due date	Payment date
205(14)	Non-payment of advance tax u/s 147.	12% per annum	The due date	The date of payment.
205(1B)	Payment of advance tax less than 90% of the tax chargeable for the relevant tax year.	12o/o pet annum on the amount falls short of 90%.	First day of April in that year.	The date of assessment or 30s June of next financial year, whichever is earlier.
205(3)	Failure in deduction of tax at source or non-payment of tax deducted.	12o/o pet annum	The date on which tax was to be deposited.	The date of payment.

Notes:

1. Default surcharge shall not be payable if tax is paid within due date mentioned in a demand notice issued by CIR [u/s 137(2f)] on the basis of an order made by CIR (Appeals) u/s 1291 and appeal to the Appellate Tribunal [u/s 131] is not filed. In this case, default surcharge shall not be payable for the period beginning from the date of order u/s 161 to the date of 'r,r([Proviso to sub-sections (1) & (3) of section 205]

2. In case of a special tax year, default surcharge shall be calculated on and from the first day of the fourth quarter of the special tax year till earlier of the date of assessment or the last day of special tax year. [Proviso to 205(18)]
3. Where it is held that default surcharge or penalty was not payable or was less payable, the excess amount recovered from the taxpayer shall be refunded to him. 205(2)
4. While imposing the default surcharge, the CIR shall make the assessment after providing the taxpayer an opportunity of being heard. [205(5) & (6)]
5. Where a person is liable for default surcharge, the CIR, at his discretion, may make assessment of default surcharge for the period of default, whether the tax due has not actually been paid. 205(7)

REDUCTION IN DEFAULT SURCHARGE [205(4)]

Where, in consequence of any order made under the Income Tax Ordinance, the amount of tax or penalty is reduced, the default surcharge on such tax or penalty, if any, shall also be reduced accordingly.

PENALTIES [182]

The Income Tax Ordinance imposes certain penalties for non-compliance of its certain provisions. Provisions relating to penalties for certain offences are summarized below:

Offence U/S	Offence	Penalty
20,111 and General	Concealment of income or furnishing of inaccurate particulars of income, claiming of any deduction not actually incurred and any act referred in section 111(1).	Higher of Rs. 100,000 or amount equal to tax sought to be evaded. No penalty shall be imposed on mere disallowance of a claim of exemption from tax of any income or amount declared or disallowance of any expenditure, unless it is proved that the person made the claim knowing it to be wrong.
754	Purchase, of immovable property having FMV more than Rs. 5,000,000 in cash or by bearer cheque.	50% of the value of the property determined u/s 68(4) or for stamp duty, whichever is the higher.
107, 108 & 165B	Failure by any reporting financial institution or reporting entity in furnishing information or country-by-country report to FBR.	Higher of Rs 25,000 or Rs. 2,000 for each day of default.
108	Failure in keeping and maintaining document and information u/s 108.	1% of the value of transactions, the record of which is required to be maintained.
114 and 116	Failure in furnishing the wealth statement or wealth reconciliation statement.	Higher of 0.1% of the taxable income per week or Rs 100,000.
114 and 118	Failure in furnishing a return of income within the due date.	1. 10% of the tax payable or Rs. 1,000 for each day of default. 2. Minimum penalty: i) Rs. 10,000 for 'salaried taxpayer'; or ii) Rs. 50,000 for all other persons. Maximum penalty Rs. 200,000 in a

		<p>tax year.</p> <p>4. Reduction in penalty on filing of return within:</p> <p>i) One month: 75%</p> <p>ii) Two months: 50%</p> <p>iii) Three months: 25%</p> <p>'Tax payable' means tax chargeable on the taxable income on the basis of assessment u/s 120, 121, 122 or 122C.</p>
1164	Failure in furnishing a foreign assets and income statement within the due date.	2% of the foreign income or value of the foreign assets for each year of default.
114, 116, 174, 176, 177 and general.	<p>(a) Making a false or misleading statement to an Inland Revenue Authority either in writing or orally or electronically in any document, statement, books of accounts, etc.. made, prepared, given, filed or furnished under the Income Tax Ordinance;</p> <p>(b) Furnishing or filing a false or misleading information or document or statement to an Income tax Authority either in writing or orally or electronically;</p> <p>(c) Omitting from a statement made or Information furnished to an Income tax Authority any matter or thing without which the statement or the information is false or misleading in a material particular.</p>	<p>Higher of Rs. 25,000 or 50% of tax shortfall.</p> <p>In case of an assessment order deemed u/s 120, penalty shall not be imposed, to the extent of the tax shortfall occurring as a result of the taxpayer taking a reasonably arguable position on the application of ITO to the taxpayers' position.</p>
137	Failure in depositing the amount of tax due or any part thereof in the time or manner laid down under the law.	<p>1 On first default 5% of tax in default.</p> <p>2 On second default Additional 25% of tax in default.</p> <p>3 On third and subsequent defaults: Additional 50% of tax in default.</p> <p>Penalty shall be reduced by 50% if the person does not file an appeal u/s 131 and opts to pay tax within the due date on a notice u/s 137(2) issued on the basis of an order u/s 129.</p>
137	Repetition of erroneous calculation in the return for more than one year whereby lesser amount of tax is paid.	<p>Higher of Rs. 10,000 or 3% of tax involved.</p> <p>Penalty shall not be imposed where taxpayer takes a reasonably arguable position on the application of ITO to his position.</p>
165, 165A and 165B	Failure in furnishing a statement within the due date.	<p>1. Rs. 5,000, if tax withheld is paid within the due date and statement is filed within 90 days from the due date; and</p> <p>2. In all other cases: Rs. 2,500 for each day of default with a minimum of Rs. 10,000.</p>

		3. Minimum penalty of Rs. 10,000 if it is established that tax was not to be withheld.
1658	Failure of Reporting Financial Institution to comply the provisions of section 1658.	Rs 10,000 for each default and additional Rs. 10,000 each month until the default is redressed.
	Filing of incomplete or inaccurate report by a Reporting Financial Institution u/s 1658. ,'	Rs.10,000 for each default and an additional Rs. 10,000 each month until the default is redressed.
	Failure of a Reporting Financial Institution in obtaining valid self-certification for new accounts or furnishing false self-certification made by the Reportable Jurisdiction Person under Common Reporting Standard Rules.	Rs.',10,000 for each default and an additional Rs. 10,000 each month until the default is redressed.
	Failure of a Reportable Jurisdiction Person in furnishing valid self-certification or furnishing false self-certification under Common Reporting Standard Rules.	Rs. 5,000b for each default and an additional Rs. 5,000C each month until the default is redressed.
174 and Chapter VII of ITR	Failure in issuing of cash memo or invoice or receipt if so required under the law.	Higher of Rs. 5,000 or 30/o of the amount of tax involved.
174,108	Failure in maintaining the required records.	Higher of Rs. 10,000 or 5% of the tax involved.
175 and 177	Denial or obstructing access of CIR or other authorized officer to the premises, place, accour,ts, documents, computers or stocks.	Higher of Rs 50,000 or 50% of tax involved.
176, 108	Failure in furnishing the required information or to comply with any other term of the notice served under these sections	1. On first default Rs 25,000 2. For subsequent defaults: Rs. 50,000 for each default.
177	(a) Failure in producing the record or documents on receipt of first notice.	Rs.25,000
	(b) Failure in producing the record or documents on receipt of second notice.	Rs. 50,000; and
	(c) Failure in producing the record or documents on receipt of third notice.	Rs. 100,000.
181	Failure in making application for registration if so required.	Rs. 10,000
181	Failure in notifying the material changes in particulars of registration.	Rs.5,000 o
181 a	Failure in declaring business bank account(s), in registration application or amending registration profile to declare existing business bank account(s) willfully	Rs. 10,000 for each day of default since the date of submission of application or date of opening of undeclared business bank account, whichever is later. Minimum Rs. 100,000 if penalty is less than Rs. 100,000 for each undeclared business bank account.
181AA	Contravention of section 181AA.	Rs. 100,000 for each connection provided to an unregistered

181C& 181D	Failure in displaying NTN or business licence certificate at the place of business.	Rs. 5,000.
181E	Contravention of section 181E by a company or an AOP.	Penalty of Rs. 1,000,000 for each default.
209, 210 and General.	Obstructing any Income Tax Authority performance of his official duties.	Rs. 25,000
148,149,150, 151,152, 153, 154, 154A, '155, 156, 156A, 158, 16A,2318,233, 234,235,236, 236A, 236C, 236CA, 236G,236H,236K 236O	Failure in collecting or deducting tax at source or non-payment of tax withheld.	Higher of Rs. 40,000 or 10% of tax.
237A.	Any person, who is integrated for monitoring, tracking, reporting or recording of sales, services and similar business transactions with FBR or its computerized system: . Conducts such transactions in a manner so as to avoid monitoring, tracking, reporting or recording of such transactions, or . Issues an invoice which does not carry the prescribed invoice number or QR code or bears duplicate invoice number or counterfeit QR code, or . Any person who abets commissioning of such offence.	Penalty which is higher of Rs. 500,000 or 200% of the amount of tax involved.
237A	Failure in getting registration of if registered failure in integrating in the specified manner for monitoring, tracking, reporting or recording of sales, services and similar business transactions with FBR or its computerized system.	Penalty up to Rs. 1,000,000. Where the person continues to commit the same offence after a period of two months from imposition of penalty, his business premises shall be sealed till he integrates his business in the prescribed manner.
237A	Failure of a person required to integrate his business to get himself registered under the ITO, and if registered, fails to integrate in the prescribed manner.	Penalty for: i) First default Rs. 500,000 ii) Second default after 15 days of first default Rs. 1,000,000 iii) Third default after 15 days of second default Rs. 2,000,000 iv) Fourth default after 15 days of third default Rs. 3,000,000 Where integration is not made within 15 days of imposition of penalty for fourth default, the business premises shall be sealed till the person integrates his business. If the person integrates his business before imposition of penalty for second default, penalty for first default shall be waived by the CIR.
General	Involvement of an offshore tax evader in offshore tax evasion.	Higher of Rs. 100,000 or 200% of the tax sought to be evaded.
General	Where a taxable person has enabled, guided, advised or managed any person to design, arrange or manage that transaction or declaration resulting in offshore tax evasion.	Higher of Rs. 300,000 or 200% of the tax sought to be evaded.
General	Involvement in 'asset move' from a specified territory to an un-specified territory.	Higher of Rs. 100,000 or 100% of the tax.

'Asset Move' means the transfer of an offshore asset to an unspecified jurisdiction by or on behalf of a person who owns, possesses, controls or is the beneficial owner of such offshore asset for the purpose of tax evasion. [2(5C)]

'Offshore Enabler' means a person who owns, possesses, controls, or is the beneficial owner of 'an offshore asset and does not declare, or under declares or provides inaccurate particulars of such asset to the CIR. t2(38A8)I

'offshore Evade/ includes any person who enables, assists, or advises any person to plan, design, arrange or manage a transaction or declaration relating to an offshore-asset, which has resulted or may result in tax evasion. t2(3gAC)I

'Specified Jurisdiction' means any jurisdiction which has committed to automatically exchange information under the common Reporting standard with pakistan. t2(6oA)I

'Unspecified Jurisdiction' means a iurisdiction wh'rch is not a 'specified jurisdiction'. t2(73A)I

Notes:

1. The penalties shall be applied in a consistent rnanner. These shall be payable only if a wriffen order has been passed by the Commissioner, Commissioner tnfipeats) or in" Appellate Tribunal after providing an opportuTity of being heard to the concerned person. Establishing mens rea is not necessary for levying of penatty u/s 1g2. t1g2(z)I
'mens rea' means the intention or knowledge of wrong-doino that constitutes part of a crime.
2. Where the taxpayer admits his default he may voluntarily pay the amount of penatty due.
3. Where order is made. by the Commissioner (Appeals)'or the Appeilate Tribunat a copy of the order imposing penalty shall be sent to the CIR who shall make arrangements for recovery of the penalty. 1182(3)I
4. Where, as a result of any order, the original amount of tax is reduced, the amount of pena'lty shallalso be reduced accordingly. [132(3)]

IMPRISONMENT AND PROSECUTTON [1 91 to199]

There are certain offences under the Income Tax Ordinance, 2001 in respect of which the offender has -not only_ to pay the default surcharge and penalties but blso has to bear further punishment in the form of fines and imprisonment. Such offences and their punishments are summarized in the table given below:

Section	Offence	Penalty
1e1(1)	Failure in compliance of the provision refating to: r) Filing of retum of income u/s 114(3) & (4); ii) Filing of retum on notice by CIR u/s 117(3); iii) Furnishing of wealth statement u/s 116; iv) Advance lax uls '147. v) Tax withholding. vi) Furnishing complete and accurate particulars of persons mentioned u/s 165(1). vii) Tax recovery notice u/s 140. viii) Furnishing information orevidence u/s 176. ix) Requirements of section 141 by a liquidator, etc. x) Providing facilities to tax officer u/s 175(3). xi) Declaring of business bank'account(g) in fie registration form or updated registration form or retum of income or wealth statement. xii) Integrate business with FBRIs com puterized system.	Imprisonment up to one (1) year or a fine or both.

	xiii) Generate 'tax invoice' verifiable by FBR's system. I 'Tax invoice' means an invoice as prescribed under the Income Tax Rules, 2012 [2(66A)]	
	Upon conviction for an offence u/s 191(1), failure in furnishing of return of income or wealth statement (without reasonable excuse) with, in the time specified by the Court.	Further imprisonment up to two (2) year or a fine up to Rs. 50,000 or both.
	A company (including a banking company) or an AOP who: (a) fails to fully state all the relevant particulars or information as specified in the form of return, including a declaration of the records kept by the taxpayer; (b) furnishes blank or incomplete particulars or information as specified in the return of income; or (c) attaches blank or incomplete annexures, statements or documents where such annexures, statements or records were required to be filed	Fine or imprisonment up to one (1) year or both.
	Non-registration u/s 998	Imprisonment up to six (6) months or a fine or both.
	Making a false statement in any verification.	Imprisonment up to three (3) years, or a fine or both.
	Concealment of income or furnishing inaccurate particulars of such income, where revenue impact is Rs. 500,000 or more.	Imprisonment up to two (2) years or a fine or both.
	Non-declaration of an offshore asset to or furnishing inaccurate particulars of an offshore asset having revenue impact of Rs. 10,000,000 or more.	Imprisonment up to three (3) years or with a fine up to Rs. 500,000 or both.
193	Failure in maintaining prescribed records.	a) For deliberate failure: Imprisonment up to two (2) years or a fine up to Rs. 50,000 or both. b) For other cases: A fine up to Rs. 50,000
194	Improper use of NTN Card.	Imprisonment up to one (1) year or a fine Rs. 50,000 or both.
195	i) Making a false or misleading statement; ii) Omitting any matter or thing without which the statement is misleading.	Offence committed knowingly or recklessly: Imprisonment up to two (2) years or a fine or both. In other cases: A fine
195A	Failure, without reasonable excuse, in complying with notice u/s 116(2).	Imprisonment up to one year or a fine up to Rs. 50,000 or both.
195B	Enabling offshore tax evasion.	Imprisonment up to one year or a fine up to Rs. 50,000 or both.
196	Obstruction of any income tax authority in discharge of its functions under ITO.	Imprisonment up to one (1) year or a fine or both.
197	Disposal (sale, mortgage, charge, lease, etc.) of any property after receipt of notice from Tax Recovery Officer, with a view to prevent the attachment of such property.	Imprisonment up to three (3) years or a fine up to Rs. 100,000 or both.
199	Knowingly and wilful abetment, assistance to or inducing another person to make a false statement or deliver a false account, return, etc.	Imprisonment up to three (3) years or a fine or both.

Notes:

1. 'Concealment of income or furnishing of inaccurate particulars of income' includes:
 - i) Suppression of any income or amount chargeable to tax;
 - ii) Claiming of any deduction for any expenditure not actually incurred; or
 - iii) Any act referred to in section 111(1). [1924(2)]
2. The following persons shall be prosecuted for a case where any of the above-mentioned offences is committed by a company or an AOP: [200(1) & (2)]

Offender	Person Liable to Prosecution
Company.	The principal officer, a director, general manager, company secretary or other similar officer of the company.
Association of persons.	A member of the association.

However, the above persons shall not be punishable if the offence was committed without their knowledge or consent, or they have exercised all diligence to prevent the offence. [200(3)]

3. Prosecution for an offence may be instituted without affecting any other liability incurred by a person under the Income Tax Ordinance. 12011
4. The Federal Government has a power to tender immunity from prosecution under specified circumstances. [204]
5. Where any person has committed any offence, the Chief Commissioner may, with the prior approval of the Board, compound offences subject to payment of tax due and default surcharge and penalty determined under the Income Tax Ordinance. Such order may be made before or after the institution of proceedings. 12021
6. Where a person did not know and could not reasonably be expected to have known that the statement was false or misleading, then he shall not commit any offence. [195(2)]
7. Statement means a statement made (in writing or orally or electronically) by a person to an income tax authority in any of the following documents: [195(3) & S. No. 10 of Table in section 1821
 - i) An application.
 - ii) A Certificate.
 - iii) A Declaration.
 - iv) A Notification.
 - v) A return.
 - vi) Any other document.

TRIAL BY SPECIAL JUDGE [203]

'Special Judge' means the Special Judge appointed u/s 203 of the Income Tax Ordinance.

Prosecution for offences under the Income Tax Ordinance shall be tried in the court of and be decided by a Special Judge appointed for this purpose. Legal provisions in this regard are discussed below:

1. The Federal Government shall appoint as many Special Judges as are considered necessary.

2. Where more than one Special Judge is appointed, the Government shall also notify the territorial jurisdiction of each of them.
3. A person to be appointed as Special Judge should be such person who is or has been a Sessions Judge.
4. The Federal Government may notify that a Special Judge appointed u/s 185 of the Customs Act, 1969 shall have jurisdiction under the Income Tax Ordinance, 2001.
5. The Special Judge shall have exclusive jurisdiction to try offences as below.

i))	Non-compliance with certain statutory obligation. [191]	Offender
ii))	False statement in verification. [192]	Company
iii))	Concealment of income. [192A]	Association of persons
iv))	Concealment of an offshore asset. [192B]	
v))	Failure to maintain records. [193]	
vi))	Improper use of NTN certificate. [194]	
vii))	Making a false or misleading statement. [195]	
viii))	Non-compliance with notice u/s 1164. [195A]	
ix))	Enabling offshore tax evasion. [195B]	
x))	Obstructing an income tax authority. [196]	
xi))	Disposal of property to prevent attachment. [197]	
xii))	Abetment to commit an offence. [199]	
6. The Court of Special Judge shall be deemed as a Court of Sessions and provisions of Code of Criminal Procedure, 1898 shall apply to the proceedings.
7. The Special Judge shall take cognizance of, and have jurisdiction to try only upon a written complaint made by the Commissioner.
The procedure provided in section 2038 of the Income Tax Ordinance shall be applicable where the offence of concealment of income which has resulted in non-payment of tax is:
 - D Rupees one hundred million and above in case of a filer; and
 - ii) Rupees twenty five million or above in case of non-filer.
8. The Federal Government may transfer a case from one Special Judge to another if it appears that such transfer shall promote the ends of justice or tend to the general convenience of parties or witnesses.
9. Where a case is transferred, the Special Judge may act on the evidence already recorded by the previous court before transfer of the case.

Appeal AGAINST ORDER OF SPECIAL JUDGE [203A]

An appeal against order of a Special Judge shall lie before the respective High Court. It may be filed within a period of thirty (30) days of the passing of order by Special Judge. Such appeal shall be heard by a Single Judge of the High Court under the Code of Criminal Procedure, 1898.

POWER TO ARREST AND PROSECUTE [2038]

1. Where on the basis of material evidence brought on record an assessment or amended is made and the assessing officer records a finding that the taxpayer has committed the offence of concealment of income which has resulted in non-payment of tax of Rupees one

hundred million and above in case of a filer and rupees twenty five million or above in case of non-filer, the taxpayer may be arrested after obtaining written approval of the committee.

Material evidence is brought on record as a result of audit conducted by the auditors u/s 177(8) read with section 214C of the Income Tax Ordinance.

2. The committee shall comprise the Minister for Finance and Revenue, the Chairman of the FBR and the senior most member of the FBR
3. All arrests made shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898.
4. Where any person has committed offence of concealment of income or any offence warranting prosecution, the Chief Commissioner with the prior approval of the FeR may, either before or after the institution of any proceedings for recovery of tax, compound the offence if such person pays the amount of tax due along with such default surcharge and penalty as is determined under the provisions of the Income Tax ordinance.
5. Where the person suspected of offence of concealment of income or any offence warranting prosecution is a company, every director or officer of that company whom the authorized officer has reason to believe is personally responsible for actions of the company contributing to offence of concealment of income or any offence warranting prosecution shall be liable to arrest:

Any arrest such shall not absolve the company from the liabilities of payment of tax, default surcharge and penalty imposed on it.

PROCEDURE TO BE FOLLOWED ON ARREST OF A PERSON t203CI

1. \A/hen an authorized officer of Inland Revenue arrests a person, he shall immediately intimate this fact to the Special Judge who may direct such officer to produce that person at such time and place and on such date as the Special Judge considers expedient. The Officer shall act accordingly.
2. Any arrested person shall be produced before the Special Judge or, if there is no Special Judge within a reasonable distance, to the nearest Judicial Magistrate, within 24 hours of arrest. Time necessary for the journey from the place of arrest [o the Court of the Special Judge or Magistrate shall be excluded.
3. When any person is produced before the Special Judge, he may, on the request of such person, admit him to bail on his executing a bond, with or without sureties, or refuse to admit him to bail and direct his detention at such place as he deems fit. This is to be done after perusing the record, if any and after giving the prosecution an opportunity of being heard
The above provision shall not preclude the Special Judge from cancelling the bail of any such person at a subsequent stage if, for any reason, he considers such cancellation necessary. Before passing such order he shall affcird such person an opportunity of being heard, unless for reasons to be recorded he considers that the affording of such c,::por.tunity shall defeat the purposes of the Ordinance.
4. When such person is produced before a Judicial Magistrate, such Magistrate may, direct his production before the Special Judge on a date and time to be fixed by him or direct such person to be forthwith taken to, and produced before, the Special Judge and he shall be so taken.
5. The above provisions shall not preclude the Special Judge or the Judicial Magistrate from remanding any such person to the custody of an officer of Inland Revenue noiOing inquiry

against that person if such officer makes a request in writing to that effect, and the special Judge or the Judicial Magistrate, after perusing the record, is of the opinion that for the completion of inquiry or investigation it is necessary to make such order. The period of such custody shall not exceed 14 days.

6. When any person is arrested, an officer of Inland Revenue shall record the fact of arrest and enter particulars in a specified register and shall immediately proceed to inquire into the charge against such person. If he completes the inquiry within 24 hours of his arrest excluding the time necessary for journey as aforesaid, he may, after producing such person before the Special Judge or the Judicial Magistrate, make a request for his further detention in his custody.

7. While holding an inquiry, an officer of Inland Revenue shall exercise the same powers as are exercisable by an officer in charge of a police station under the Code of Criminal Procedure, 1973. However, while holding an inquiry the officer shall exercise such powers in the light of the above-discussed Provisions.

If, after an inquiry, an officer of Inland Revenue is of the opinion that there is no sufficient evidence or reasonable ground for suspicion against such person, he shall release him on his executing a bond, with or without sureties, and shall direct such person to appear, as and when required, before the Special Judge. He shall also make a report to the Special Judge for the discharge of such person and a full report of the case to his immediate superior.

9. The Special Judge may, after the perusal of record of the inquiry, and treating the prosecution, agree with such report and discharge the accused. Where he is of the opinion that there is sufficient ground for proceedings against such person, proceed with his trial and direct the prosecution to produce evidence.

10. An officer of Inland Revenue empowered to hold inquiry shall maintain a register to be called "Register of Arrests and Detentions" in the prescribed form in which he shall enter the name and other particulars of every person arrested, together with the time and date of arrest, the details of the information received, the details of things, goods or documents, recovered from his custody, the name of the witnesses and the explanation, if any, given by him and the manner in which the inquiry has been conducted from day to day and, such register or authenticated copies of its entries shall be produced before the Special Judge, whenever so directed by him.

After completing the inquiry, an officer of Inland Revenue shall, as early as possible, submit to the Special Judge a complaint in the same form and manner in which the officer in-charge of a police station submits a report, before a court.

Magistrate of the first class may record any statement or confession during inquiry, in accordance with provisions of section 164 of the Code of Criminal Procedure, 1898.

11. FBR, with the approval of the Federal Minister-in-charge, may also authorize any other officer working under it to exercise the powers and perform the functions of an officer of Inland Revenue u/s 203C. This authority is to be exercised by a notification in the official Gazette and shall be subject to such conditions as FBR may deem fit to impose.

13.

SPECIAL JUDGES [203D]

1. The Federal Government shall appoint as many Special Judges as it considers necessary. Where more than one Special Judge is appointed, it shall notify headquarters of each Special Judge and the territorial limits within which he shall exercise his jurisdiction.

The person to be appointed as a Special Judge must be or has been a Sessions Judge.

COGNIZANCE OF OFFENCES BY SPECIAL JUDGES [203E]

1. Irrespective of any contained in any other law, a Special Judge may, within the limits of his jurisdiction, take cognizance of any offence punishable under the Income Tax Ordinance upon:
 - i) A written report made by an officer of Inland Revenue or by any other officer especially authorized in this behalf by the Federal Government;
 - ii) Receiving a complaint or information of facts constituting such offence made or communicated by any person;
 - iii) His own knowledge acquired during any proceeding before him under the Income Tax Ordinance or under any other law for the time being in force
2. Upon the receipt of report from an officer, the Special Judge shall proceed with the trial of the accused.
2. Upon the receipt of a complaint or information, the Special Judge may, before issuing a summons or warrant for appearance of the person complained against, hold a preliminary inquiry for the purpose of ascertaining the truth or falsehood of the complaint, or direct any magistrate or any officer of Inland Revenue or any police officer to hold such inquiry and submit a report, and such Magistrate or officer shall conduct such inquiry and make report accordingly.
4. The Special Judge may proceed against the person complained against in accordance with law if, after conducting such inquiry or after considering the report of such Magistrate or officer, he is of the opinion that there is:
 - i) No sufficient ground for proceeding, he may dismiss the complaint, or
 - ii) Sufficient ground for proceeding.
5. A Special Judge or a Magistrate or an officer holding inquiry may hold such inquiry, as early as possible, in accordance with the provision of section 202 of the Code of Criminal Procedure, 1898.

SPECIAL JUDGE, ETC. TO HAVE EXCLUSIVE JURISDICTION [203F]

Notwithstanding anything contained in the Income Tax Ordinance, 2001 or in any other law for the time being in force no,-

1. Court other than the Special Judge having jurisdiction, shall try an offence punishable under the Income Tax Ordinance, 2001;
2. Other court or officer, except in the manner and to the extent specifically provided for in the Income Tax Ordinance, 2001, shall exercise any power, or perform any function under the Income Tax Ordinance, 2001;
3. Court, other than the High Court, shall entertain, hear or decide any application, petition or appeal under Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, against or in respect of any order or direction made under the Income Tax Ordinance, 2001; and
4. No court, other than the Special Judge or the High Court, shall entertain any application or petition or pass any order or give any direction under Chapters XXXV, XXXIX, XLIV or XLV of the Code of Criminal Procedure, 1898.

PROVTSQNS OF CODE OF CRIMINAL PROCEDURE, 1898, TO APPLY [203G]

1. The provision of the Code of Criminal Procedure, 1898, so far as they are not inconsistent with the provisions of the Income Tax Ordinance, shall apply to the proceedings of the court of a Special Judge. Such court shall be deemed to be a court of Sessions.
2. The Code of Criminal Procedure, 1898, shall have effect as if an offence punishable under the Income Tax Ordinance were one of the offences referred to in section 337(1) of the Code.

TRANSFER OF CASES [203HI]

1. Where more than one Special Judge are appointed within the territorial jurisdiction of a High Court, the High Court, and where not more than one Special Judge is so appointed, the Federal Government, may by order in writing direct the transfer, at any stage of the trial, of any case from the court of one Special Judge to the Court of another Special Judge for disposal.

The High Court or the Federal Government shall do so if it appears that such transfer may promote the ends of justice or tend to the general convenience of the parties or witnesses.

2. In respect of a case transferred the Special Judge shall not, by reason of the said transfer, be bound to recall and rehear any witness whose evidence has been recorded in the case before the transfer and may act upon the evidence already recorded or produced before the court which tried the case before the transfer.

PLACE OF SITTINGS [203II]

A Special Judge shall ordinarily hold sittings at his headquarters but, keeping in view the general convenience of the parties or the witnesses, he may hold sittings at any other place.

IMMUNITY FROM PROSECUTION [204]

The FBR with the approval of the Minister-in-charge may immune a person from prosecution under the Income Tax Ordinance or the Pakistan Penal Code. The immunity is tendered for the purpose of obtaining the evidence of such a person who appears to have been connected with or is privy to the concealment of income or tax evasion. This immunity shall be available to a person on the condition that he will disclose the whole information about the case. [204(1)]

Where tender of immunity is made to and accepted by a person he shall not be prosecuted for any offence in respect of which the immunity has been given., {2ut:}

However, if it appears that the person is concealing anything or giving false evidence or is not complying the conditions on which the immunity was tendered, the FBR with the approval of the Minister-in-charge may withdraw the immunity and prosecute him under the law. [204(3)]

CHAPTER-22

REFUND OF TAX

REFUND

Refund is an amount payable by the Tax Department to a taxpayer. It may arise due to an excessive deposit of tax as against the amount that was payable under the provisions of the law.

Sections 170 and 171 of the Income Tax Ordinance, 2001 and Rule-71 of the Income Tax Rules, 2002 specify the provisions relating to the refund of tax.

INSTANCES OF REFUND

A refund may accrue or arise as a result of any or all of the following situations:

1. Where the amount paid by the taxpayer himself or by any other person on his behalf exceeds the amount of tax payable by him for the year.
2. Where a loan or advance, given by a private company to any of its members, is treated as dividends [u/s 2(1gXe)] of a taxpayer and he has repaid such loan or advance.
3. Where the total income of a person includes such income of some other person which cannot be clubbed with his incomes.
4. Where the tax liability of a taxpayer is wrongly assessed and the taxpayer had to pay more tax than what he was liable for.
5. Where the tax liability is reduced due to rectification of an error or a relief granted by any competent authority.
6. Where the tax at source was deducted at a higher rate.
7. Where the taxpayer was wrongly charged to tax at a higher rate.
8. Due to any other reason.

PERSONS ENTITLED TO CLAIM A REFUND

The following persons are entitled to claim a refund from the Tax Department:

1. The taxpayer himself, or
2. The legal representative, trustee, guardian or receiver of the taxpayer in the case of his incapacity, insolvency, liquidation, death, etc.

CONDITIONS APPLICABLE TO REFUND [170 & Rule 71]

The following conditions shall be applicable to a claim for refund being lodged- before the Commissioner:

1. An application for refund should be made in the prescribed Form and verified in the prescribed manner. [Rule-71 of the Income Tax Rules, 2002 prescribes the form of application for refund.]
2. The application should be accompanied by a copy of the return of total income, if the same has not already been filed.

3. The application should be made to the Commissioner for the CIRCLE in which the applicant is assessable, otherwise to the Commissioner for the CIRCLE in which he resides.
4. The application may be presented in person or through a duly authorized agent. It may also be sent by post.
5. The application for refund shall state the following information:
 - i) Total tax computed for the tax year;
 - ii) Total tax chargeable in respect of the total income; and
 - iii) Total amount of tax paid.
6. The FBR may make rules regulating procedure for expeditious processing and automatic payment of refunds through centralized processing system. That system shall be effective from a date to be notified by the FBR. [170(6)]

PERIOD FOR MAKING AN APPLICATION FOR REFUND [17(2)]

An application for refund shall be made within a specified time period. Otherwise it may be liable to be rejected by the CIR. The allowable time period for submission of an application for refund is three (3) years of the later of:

1. The date on which the Commissioner has issued the assessment order for the year to which refund relates; or
2. The date on which the tax was paid.

ORDERS BY THE COMMISSIONER [170(3) to (5)]

The Commissioner may make necessary enquiry and call for such particulars, documents or evidence as he may require and thereafter, may admit or reject the application. The order for refund or rejection of an application shall be made in writing.

Where the Commissioner is satisfied that tax has been over paid, he may apply that amount in the following order:

1. Adjust it against any other tax liability of the person under the Income Tax Ordinance, 2001; 2. Adjust against tax liability under any other tax laws (e.g., Sales Tax etc.); and
3. Refund the balance amount, if any, to the taxpayer.

The order for application and refund of excess amount shall be made by Commissioner within sixty (60) days of the receipt of refund application.

Where the Commissioner rejects the application of the taxpayer, he shall communicate it to the applicant in writing along with the reasons of rejection. The applicant may file an appeal against the order of CIR. If the orders are not made within the specified time or he disagrees with the orders of

CIR.

ELECTRONIC PROCESSING AND ISSUANCE OF REFUNDS By FBR 170AI

From tax year 2021, the FBR may process and issue refund to the taxpayer return of income without requiring refund application by the taxpayer to be verified by the FBR's computerized system. Other provisions in this regard are:

1. This shall apply notwithstanding anything contained in section 170 of the Income Tax Ordinance, 2001.

2. FBR may be prescribed rules in this regard.
3. The refund amount sanctioned under this procedure shall be electronically transferred in the taxpayer's notified bank account.

ADDITIONAL PAYMENT FOR DELAYED REFUND 171(1)

The Ordinance specifies that payment on account of refund shall be made within a period of three (3) months of the date on which it becomes due. In case of a delay in payment, an additional amount at the rate of KIBOR plus 0.5% per annum shall be payable to the taxpayer.

Where there is a reason to believe that a person has claimed the refund which is not admissible to him, the payment of additional amount shall not apply till the investigation of the claim is completed and the claim is either accepted or rejected.

'KIBOR' means Karachi Inter-Bank Offered Rate prevalent on the first day of each quarter of the financial year. [2(30AB)]

WHEN A REFUND BECOMES DUE 171(2)

Determination of the date on which a refund becomes due is very important for ascertaining the period in which a refund may be made without any additional compensation to the taxpayer. The dates when a refund shall be deemed to have become due are exhibited in table given below.

Sr. No.	Nature of the Case	Due Date
1	Refund as a result of an order passed by any authority in an appeal or a revision petition.	The date of receipt of the order by CIR.
2	Refund as a result of a revision order passed by CIR.	The date on which Commissioner made the order.
3	Any other case.	The date on which refund order is made.

Notes:

1. For the purpose of compensation for late refund in a case where refund order is made u/s 170(1), the refund becomes due from the date of refund order and not the date of assessment.
2. The Commissioner may withhold the amount of refund if an order, giving rise to refund, is the subject matter of an appeal.
3. Amount of refund may be utilized for setting off the tax liability of a taxpayer under the Income Tax ordinance, Federal Excise Act, Sales Tax Act or customs Act. 170(3xb)
4. From tax year 2009 onwards, wherever refund of tax is claimed in a non-company case, income tax return shall be filed electronically, and in all cases, whether relating to a company or a non-company, electronic filing of refund application shall be mandatory. [Rule 73(2E)]

PAYMENT OF REFUND THROUGH INCOME TAX REFUND BONDS 22C & 171A

Instead of paying income tax refunds through cheques or bank debit advices, income tax refund bonds may also be issued by FBR Return Settlement Company Limited (FRSC) in book-entry form through a central depository licensed by the SECP. Payment of refunds through bonds is subject to the following conditions:

1. The claimant has opted for payment of refund in this manner; and
2. The procedure for issuance, redemption and other matters notified by the Federal Government is observed.

The procedure to be adopted for this purpose shall be as below:

1. The FBR shall issue a promissory note to the FRSC incorporating the details of refund claimants and their respective amounts of refund.
2. The FRSC shall issue the bonds having maturity period of three (3) years with simple profit @ 10% p.a. The bonds shall be:
 - i) Issued in values in multiples of Rs. 100,000;
 - ii) Traded freely in the country's secondary markets;
 - iii) Approved security for calculating the statutory liquidity reserve;
 - iv) Accepted by the banks as collateral;
 - v) Exempt from the compulsory deduction of Zakat. The Sahrb-e-Nrsab may pay Zakat voluntarily according to Sharaah.

Redemption of Bonds

On Maturity of Bond:

The FRSC shall return the promissory note to the FBR, which shall make payment of the amount due (along with the profit due) under the bonds to the bond holders.

Before Maturity of Bonds:

The FBR, at its own option, may redeem the bonds in the manner discussed above and pay the amount due along with the profit due to the bond holders. This redemption shall be in the light of any general or specific policy to be formulated by the FBR.

'FBR Refund Settlement Company Limited (FRSC)' means the company which is incorporated under the Companies Act, 2017, for the purposes of settlement of income tax refund claims including payment by way of issuing refund bonds under section 171A.12(22A)

CHAPTER-23

APPEALS AND REVIEWS

Ots

Any proceeding under the Income Tax Ordinance, 2001 gives rise to an inter-action between the Tax Department on one part and the taxpayer on the other. It may happen that the point of view of one party does not coincide with that of the other's. Under such a condition the Ordinance provides two courses of action, which are:

1. Consideration of the case by the Administrative Authorities; and
2. Referring the matter to the Appellate Authorities.

APPEAL

Whenever a dispute or difference of opinion is brought before the Appellate Authorities for decision, it is commonly termed as "appeal".

REVISION

"Revision" is the reconsideration of the case by the same or the higher Administrative Authority. Revision may be initiated by the Authority revising the case of its own or on an application made by the taxpayer.

PECUNIARY JURISDICTION IN APPEALS [1264]

Pecuniary Jurisdiction of Appellate Authorities 126A(1)

An appeal against the order of Commissioner [C/R/ or other officer shall lie to Commissioner (appeals) [CIR(A)] or Appellate Tribunal Inland Revenue [ATIR] as below

Value of Assessment of Tax or Refund of Tax
Up to Rs. 20 million
Exceeding Rs. 20 million

Appeal Shall Lie To

Appeal Against Order of CIR(A) & ATIR 1264(2) & (3)

An appeal against the order of CIR or other officer shall lie to CIR(A) or ATIR as below.

Value of Assessment or Refund	Appeal Decided By
Up to Rs. 20 million	CIR (Appeals)
Exceeding Rs. 20 million	Appellate Tribunal

Reference Shall Lie Before

Court

Court

'Value of Assessment of tax' means the net increase in tax liability of a person as a result of order sought to be assailed.

'Value of Refund' means net reduction in refund as a result of order sought to be assailed.

Cases Pending Before CIR(A) 1264(4) & (5)

Cases pending before the CIR(A) and having value more than Rs. 20 million shall also be referred before 31-12-2024 stand transferred to ATIR.

Cases so transferred shall be decided by ATIR within six (6) months from the date starting from 1606-2024 or the date of transfer of case.

Cases so transferred shall be decided by ATIR within six (6) months from the date starting from 1606-2024 or the date of transfer of case.

COMMISSIONER (APPEALS)

"Commissioner (Appeals)" means a person appointed to be a Commissioner Inland Revenue (Appeals) under section 208 of the Income Tax Ordinance, 2001. (13A)

The Federal Board of Revenue (FBR) is empowered to appoint as many Commissioners (Appeals) as is deemed necessary. He will be subordinate to the FBR and his jurisdiction shall also be determined by the FBR.

FBR's orders/instructions and directions are to be followed by all officers and persons employed in the execution of the Income Tax Ordinance, 2001. However, the FBR cannot issue such orders, instructions or directions so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

APPEAL TO THE COMMISSIONER (APPEALS) [127-129]

Appeal before Commissioner (Appeals) lies only if the value of assessment of tax or refund does not exceed Rs. 10 million. Any person dissatisfied with the orders may file an appeal. A taxpayer may file an appeal to the Commissioner (Appeals) against any of the following issued by the Commissioner or officer of Inland Revenue: (127(1))

1. Assessment after making adjustments in the return filed by a taxpayer. [120(2A)]
2. Assessment of person who has not furnished a return. [121]
3. Alteration in the assessment through amended assessment. [122]
4. Determination of the income and the tax liability of a non-resident Business. [143] carrying on Shipping
5. Determination of the income and the tax liability of a non-resident carrying on Air Transport Business. [144]
6. Holding a person liable to pay the amount of tax collected but not deposited or not deducted as required under the law. [161(1)]
7. Recovery of tax from a person from whom it was not deducted or collected at source. [162(1)]
8. Legal action (i.e., imposition of default surcharge, disallowance of an expense as deduction, etc.) against the person who has not deducted or collected the tax at source. [162(2)]
9. Declaring a person as representative of a non-resident person. [172(3)(1)]
10. An order giving effect to any finding or directions in any order made by the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court.
11. Determination of the refund or adjustment of the excess amount paid by a taxpayer. [170]
12. Imposition of penalty for Failure to furnish return of total income, statement, etc. [182]
13. Imposition of default surcharge for failure in payment of any tax, penalty, etc. [205]
14. Refusal to rectify the mistakes in the orders pointed out by the taxpayer. [221]

15. Issuance of an order having the effect of enhancing the assessment.
16. Issuance of an order having the effect of reducing the refund.
17. Issuance of an order through which the liability of the person is increased.

Conditions Applicable to the Appeal 1127(2) to (6)

The following conditions shall be applicable to the appeal before the Commissioner (Appeals).

1. The application for appeal shall be made in the Form specified in Rule-76 of the Income Tax Rules, 2002.
2. The taxpayer shall verify the application for appeal in the manner as specified in Rule-76.
3. An appeal shall state precisely the grounds upon which it is made.
4. The taxpayer has paid the admitted tax liability as is required u/s 137(1) of the Income Tax Ordinance, if appeal is against an assessment order.
5. The FBR may prescribe mechanism for electronic filing of the appeals.
6. The appeal fee has been paid. The evidence as to the payment of appeal fee shall be attached with the appeal. The appeal fee shall be payable as per the following:
 - a) In a case of an appeal against assessment:
 - i) In the case of companies: Rs. 5,000; and
 - ii) For other taxpayers: Rs. 2,500.
 - b) In any other case:
 - i) In the case of companies: Rs. 5,000; and
 - ii) For other taxpayers: Rs. 1,000.
7. The appeal shall be filed within thirty (30) days of the intimation of orders against which the IPO is being filed. The Commissioner (Appeals) has the powers to extend the filing period if he is satisfied that there existed some sufficient cause.

Note: In a case where amount of tax is involved, the date of intimation of order shall be the date on which the Demand Notice is served to the taxpayer.
8. The appeal should be filed in duplicate.
9. The appeal should be accompanied by the notice of demand and/or a copy of the assessment or other order being appealed against.
10. A true copy of the appeal shall be sent to the concerned Commissioner by Registered Post/SAD/Courier service/personally. The appellant shall certify that he has dispatched the copy to the Commissioner.

Procedure and Decision of the Appeal 1129, 1131

On receipt of an appeal, the Commissioner (Appeals) shall fix the date of its hearing and communicate the same to the appellant and the concerned Commissioner. During the proceedings, he shall provide an opportunity to each of the parties to present arguments, evidences, etc., in favour of his point of view. The Commissioner (Appeals) may adjourn the hearing from time to time. He may also allow the appellant to file any new ground of appeal not already specified if the omission was not willful or unreasonable. He may require the concerned Commissioner to further enquire a matter arising in the appeal. 1128(1) to 1131

Generally, the Commissioner (Appeals) shall not admit any documentary material or evidence, which was not produced before the Commissioner. However, where he is satisfied that the appellant was prevented by sufficient cause from producing such material or evidence before the Commissioner, then he may admit the material or evidence. t128(5)

Where in a particular case, the Commissioner (Appeals) is of the opinion that the recovery of tax (levied under the Income Tax Ordinance) shall cause undue hardship to the taxpayer, he may stay the recovery of such tax for a period not exceeding thirty (30) days in aggregate. Before issuing such an order the Commissioner (Appeals) shall afford an opportunity of being heard to the Commissioner against whose order appeal has been made. t128(14)

The Commissioner (Appeals) may stay the recovery of such tax for a further period of thirty (30) days. While doing so it shall be ensured that opportunity of being heard is provided to the Commissioner against whose order appeal has been made and the order on appeal shall be passed within this extended period of thirty (30) days.

After complete examination of the case, and in the light of the documents, records, evidences and the arguments presented before him, the Commissioner (Appeals) shall decide the case. He may make any of the following orders: [129(1)]

1. Confirm the order passed by the Commissioner;
2. Modify the assessment orders made by the Commissioner; or
3. Annul (cancel) the orders made by Commissioner; or
4. Any other order as he may think fit.

Notes:

1. The Commissioner (Appeals) shall provide the taxpayer a reasonable opportunity of being heard before making an order which enhances the tax liability or reduces the refund or tax credit of the taxpayer's. t129(2)
2. Where, as a result of an appeal, there is a change in the assessment of an Association of Persons (AOP), the Commissioner (Appeals) may authorize the Commissioner to amend accordingly the assessment of the members of AOP. Under such a case the time limit for amended assessment shall not apply. [129(3)]

Communication of the Orders t129(4)

As soon as practicable after deciding the appeal, the Commissioner (Appeals) shall specify in the order the amount of tax upheld and communicate his orders to the following persons:

1. The appellant (i.e., the taxpayer).
2. The concerned Commissioner Inland Revenue.

Notes:

1. The order shall be passed within a period of 120 days from the date of filing an appeal. The Commissioner (Appeals) may extend this period upto further 60 days. This extension must be in writing and contain the reasons for extension

Where the hearing of an appeal is adjourned at the request of the appellant or is postponed due to any appeal or proceedings or stay order, remand or alternate dispute resolution proceedings or for any other reason, the period of adjournment, postponement, etc., shall be excluded in the computation of the above-referred periods.

2. It is the taxpayer who can file an appeal to the Commissioner (Appeals). Tax Department is not allowed to file such appeal. If an order passed by the Commissioner results in the loss to the revenue, it may be revised by the Commissioner under section 122..

Status of Decision of Commissioner (Appeals) [126A & 133(1)]

Seemingly, the law is silent about the status of the decision of CIR(A). But perusal of section 133(1) reveals that:

1. A reference may be filed by any of the parties before the High Court only if any 'question of law' or a 'mixed question of law and facts' arises out of the order of CIR(A); and
2. No reference may be filed before the High Court if only the 'question of fact' arises out of the order of CIR(A).

It may be construed from the above that in a case where 'pure question of fact' is involved, the decision of CIR(A) shall be final.

APPELLATE TRIBUNAL INLAND REVENUE [2(2) & 130]

'Appellate Tribunal' means the Appellate Tribunal Inland Revenue (ATIR) established u/s 130 of the Income Tax Ordinance, 2001 in the manner as may be prescribed in the Rules. The Tribunal is established to exercise the powers and perform the functions conferred on it under the Income Tax Ordinance. It consists of a chairman and such number of members as are considered necessary.

The constitution of benches of ATIR, case management system, distribution of cases and other matters ancillary or incidental thereto shall be regulated by the rules specified by the FG.

Members of Appellate Tribunal 130(1) to (2)

ATIR shall consist of a chairperson and such other members as are by+he appointed by the FG in such terms and conditions as may be prescribed in the Rules and in accordance with such procedure and rules as may be prescribed by the Federal Government.

The existing members including Chairman shall continue to hold office, on the same terms and conditions as applicable to them prior to 03-05-2024 (i.e., the commencement of Tax Laws (Amendment) Act, 2024) till the completion of their term of office unless resigned or removed earlier on the grounds of inefficiency or misconduct.

Rules made in this regard shall take effect notwithstanding anything contained in section 237 of ITO or the Federal Public Service Commission Ordinance, 1977 or any other law or rules, for the time being in force.

Persons Eligible to be Appointed as Members [130(3)]

Following persons are eligible to be appointed as members of ATIR:

1. An advocate of a High Court for not less than fifteen (15) years and possesses such other qualifications as prescribed in the Rules;
2. A Chartered Accountant who has practiced professionally for at least ten (10) years;
3. A Cost and Management Accountant who has practiced professionally for at least ten (10) years;
4. An officer of the Inland Revenue in BS-21 or above; or
An officer of the Inland Revenue in more. BS-20, having served in such grade for three years or

Chairman of Appellate Tribunal t130(4)

Any member who is an advocate, CA or CMA shall be appointed by FG as Chairman of ATIR. Term of office shall be three (3) years. The FG may reappoint him/her for such further term or terms as deemed appropriate.

Term of Office of Members t130(5)

Members including chairman shall hold office till attaining the age of sixty-two (62) years. However, the service of officer of Inland Revenue appointed by the Government shall be subject to the law regulating their services. They will cease to hold office on attaining the age of superannuation.

Procedure of Appellate Tribunal t130(5) & (6)

Constitution, functioning of benches and procedure of the Appellate Tribunal shall be regulated by the prescribed rules. In the absence of the above-referred rules, provisions of section 150 existing prior to commencement of the Tax Laws (Second Amendment) Act, 2001 shall continue in force.

Repealed Provisions of Section 130 Still Operative till Formulation of the Prescribed Rules

The Chairperson of the Appellate Tribunal is appointed by the Federal Government. The powers and functions of Appellate Tribunal are exercised and discharged by the Benches. The Benches are constituted by the Chairperson out of the members of the Appellate Tribunal, who are appointed by the Federal Government.

Every Bench shall consist of at least two members. The number of each type of members shall be equal in a Bench. However, the Chairperson may constitute a Bench which does not contain equal number of members of each type. Under such a case, the difference between two types of members should not be more than one.

The Federal Government is empowered to direct that all or any of the powers of the Appellate Tribunal may be exercised by any member or members of the Tribunal.

Notwithstanding any other provision, the Chairperson may constitute as many benches consisting of a single member as he may deem necessary to hear such cases or class of cases as the Federal Government may by order in writing, specify.

The Chairperson or other member of the Appellate Tribunal, authorized in this behalf by the Chairperson, may, sitting single, dispose of any case where the amount of tax or penalty involved does not exceed Rs. 1,000,000.

The decisions of the Appellate Tribunal are made according to the opinion of the majority of the members of the bench. Where the members are equally divided in their opinion, the matter is referred to the Chairperson. He, under such a case, will appoint one or more members to the bench and the decision of the majority shall be deemed to be the decision of the Appellate Tribunal.

The Appellate Tribunal has the powers to regulate its own procedure and the procedure of its Benches in all matters arising out of the discharge of its functions.

APPEAL TO THE APPELLATE TRIBUNAL [131, 132 & Rule 77]

The taxpayer or the Commissioner Inland Revenue not satisfied with the orders passed by an officer of Inland Revenue, CIR, CCIR or FBR may file an appeal to the Appellate Tribunal. Appeal may be made only if the value of assessment of tax or refund or tax exceeds Rs. 20 million.

Large Owned Enterprise (SOE) t131(1) & 134A(1)

An SOE cannot file an appeal before ATIR. However, where a matter is referred to ADRC, it may file an appeal before the Appellate Tribunal. The appeal may be made only if the value of assessment of tax or refund or tax exceeds Rs. 20 million.

Conditions Applicable to the Appeal

All the following conditions shall be satisfied at the time of making an appeal to the Appellate

1. The application for appeal shall be made in the Form specified in Rule-77 of the Income Tax Rules, 2002.
2. It should be verified in a prescribed manner.
3. The appellant shall verify that whatsoever is stated in the appeal is true to the best of his knowledge.
4. The appeal fee has been paid. The evidence as to the payment of appeal fee shall be attached with the appeal. Only the taxpayer is required to pay the prescribed fee shall be as below:
 - i) - In the case of companies: Rs. 20,000; and
 - ii) For other taxpayers: Rs. 5,000.
5. The appeal shall be filed within thirty (30) days of the communication of the orders against which the appeal is being filed. The appellate-tribunal has power to extend the filing period, if it is satisfied that there existed some sufficient cause which prevented the appellant from filing the appeal within the specified period.

The memorandum of appeal must be in triplicate and shall be accompanied by two copies of each of the following orders:

 - i) Orders against which the appeal is being filed; and
 - ii) Orders of the Commissioner
7. The memorandum of appeal should set forth the ground of appeal without any argument or narrative. These grounds should be numbered consecutively.
8. The tax shall have to be paid according to the assessment order. However, the Appellate Tribunal may grant stay against its recovery.
9. If on filing of application in a particular case, the Appellate Tribunal is of the opinion that the recovery of tax, levied by Commissioner shall cause undue hardship to the taxpayer, the Tribunal may stay the recovery of tax for 90 days. Such stay order shall be issued on an application of the taxpayer and after providing an opportunity of being heard to the Commissioner.

If the taxpayer does not adhere to the hearing schedule for the appeal, the stay order shall cease to have effect and the CIR shall be entitled to recover tax determined by the Assessing Officer in accordance with the rules made u/s 130.

Where an appeal is not decided within the statutory period, the stay order shall not cease (as above) till finalization of appeal by ATIR.

Where recovery of tax has been stayed, such stay order shall cease on expiration of 180 days following the date on which it was made. Thereafter the CIR shall proceed to collect the due tax.
- 10.
11. While computing the period of 180 days, the period if any, for which the recovery of tax was stayed by a High Court shall be excluded.

Procedure of Appeal t132(2) & (3)

At the first hearing of appeal, ATIR shall give an option to the taxpayer of ADR u/s 134A of ITO.

Where the taxpayer declines the option of ADR and wishes to continue with the appeal, ATIR shall fix date or dates for hearing and decision of the appeal. The date shall be fixed in consultation with the taxpayer and CIR and in accordance with the rules.

The ATIR shall fix the date or dates for hearing the appeal. It shall ensure strict adherence of by the taxpayer and the Commissioner the hearing schedule and decide the appeal. Generally there will be no adjournment, however, under the following cases it may be granted:

1. Where there are compelling reasons for adjournment, which shall be recorded by ATIR; and 2 On mandatory payment of such cost as deemed fit by it. The cost shall not be less than Rs. 50,000.

Decision of the Appeal

The Appellate Tribunal, after due examination of the case and considering the evidences, documents, records and arguments presented before it, shall decide the appeal within six (6) months of its filing. Appellate Tribunal may make any of the following decisions:

1. Confirm the orders passed by Commissioner (Appeals).
2. Annul the orders passed by Commissioner (Appeals).
3. Reduce the tax liability or the penalty.
4. Enhance the tax liability or the penalty.
5. In case of default by any of party on the date of hearing, Appellate Tribunal may proceed ex-parte to decide the appeal on the basis of available record.
6. Remand the case to Commissioner or Commissioner (Appeals) for making such enquiry or taking such action as Appellate Tribunal may direct.
7. Any other order as it may think fit.

Notes:

1. The Appellate Tribunal must provide the taxpayer an opportunity of being heard before enhancing the tax liability or penalty or reducing the tax refund or tax credit.
2. Where, as a result of an appeal, there is a change in the assessment of an AOP, the Appellate Tribunal may authorize Commissioner to amend accordingly the assessment of the members of AOP. Under such a case the time limit for amended assessment shall not apply.

Decision Period t132(1)

The ATIR shall decide the appeal within ninety (90) days from the date of its filing.

However, appeals pending before ATIR on 03-05-2024 (i.e., the date of commencement of the Tax Laws (Amendment) Act 2024), shall be decided within 180 days. Where an appeal is not decided within the specified period, the ATIR shall seek condonation from the Minister of Law and Justice, which shall not extend beyond ninety days.

Communication of Orders

The Appellate Tribunal shall communicate its orders to the following persons:

1. The taxpayer; and
2. The concerned Commissioner Inland Revenue.

Status of the Appellate Tribunal's Decision

Any case before any appellate authority may involve either a 'point of fact' or a 'point of law'. If the matter before the Appellate Tribunal relates to the point of fact, the decision of the Tribunal shall be final and no appeal shall lie before any other authority. However, if a point of law or 'mixed question of law and fact' is involved, the case may be referred to the High Court.

For understanding the difference between 'point of law' and the 'point of fact', assume that Mr. Ali is deemed to have been received Rs. 100,000 from Mr. Babar.

There may be two points needing decision of the assessing or the appellate authorities, which are:

1. Whether Mr. Ali has received Rs. 100,000 or not; and
2. Whether the amount received may be treated as income or not.

If the matter involves the decision regarding the first point, it will be the decision as to the 'point of fact' and in the second case, the decision relates to the 'point of law'.

REFERENCE TO THE HIGH COURT [133 & Rule-78]

Any of the parties, i.e., the taxpayer or the Tax Department, if not satisfied with the decision (involving 'question of law' or 'mixed question of law and fact') given by the Appellate Tribunal or Commissioner (Appeals), may refer the case to the High Court. The provisions of the law in this regard are summarized below:

1. Any party (i.e., the Commissioner or the aggrieved person) may file an application to the High Court against the orders of Appellate Tribunal or Commissioner (Appeals).
2. Only such orders of the tribunal may be referred to the High Court which involve any question of law or 'mixed question of law and fact'.
3. The application shall be made within ninety thirty (30) of the communication of the impugned order.
4. Application by the CIR shall be accompanied by a written authorization by the relevant CCIR, otherwise his application shall not be entertained.
5. The applicant shall also file complete record of the ATIR or CIR(A) within 15 days of preferring an application before High Court.
6. The application shall be on the prescribed form along with the statement of the case, which shall set out:
 - i) The facts of the case;
 - ii) The determination of the Appellate Tribunal or Commissioner (Appeals); and
 - iii) The 'question of law' or 'mixed question of law and fact' arises out of the impugned order.
5. The High Court shall proceed to hear the case only if it is satisfied that there exists a question of law.
6. The taxpayer shall pay a fee of Rs. 50,000.

7. A certification by the appellant that respondent has been intimated regarding filing of reference along with copy of the reference and the date of intimation.
8. The application shall be made on a prescribed form and it shall be verified as prescribed under Rules-78 of the Income Tax Rules, 2002.
9. A Bench of at least two Judges of the High Court shall hear the case.
10. Irrespective of the reference made to the High Court, the tax shall be payable in accordance with the impugned order. However, the Court may grant stay for the recovery of tax. i
However, the CIR shall not make the tax recovery during thirty (30) days from the date of communication of the order of ATIR or CIR(A).

11. Where the High Court has stayed the recovery of tax, the stay order shall cease to have effect by the date which is earlier of the following:

- i) Expiration of six (6) months from the date on which stay was granted;
- ii) The date on which appeal is decided; or
- iii) The date on which stay order is withdrawn by the High Court.

12. Where the High Court has not granted the stay, the taxpayer has to pay the amount of tax decided by the Appellate Tribunal or Commissioner (Appeals). And if as a result of the judgment of the High Court the amount of tax is reduced, it will be refunded to the taxpayer.

However, the High Court may authorize the Commissioner to postpone the refund until the disposal of the appeal by the Supreme Court. The Court shall pass such order only if the Commissioner has filed an application (within thirty (30) days of the decision by the High Court) that he wants to prefer an appeal to the Supreme Court.

Decision of the Appeal

Any appeal before the High Court shall be heard by special bench of at least two Judges. Provisions of section 98 of the Code of Civil Procedure, 1908 and section 5 of the Limitation Act, 1908 shall apply to an application made to the High Court.

The Court, after complete examination of the case, shall decide the reference within six (6) months from the date of its filing. It shall:

1. Decide the question of law raised by the reference and pass judgment thereon; and
2. Specify the grounds on which the judgment is based.

On announcement of the judgment by the High Court, the order of Appellate Tribunal or Commissioner (Appeals) shall stand modified accordingly. The judgment shall be communicated by the Court to the Appellate Tribunal, which shall pass the necessary orders for the complete implementation of the said judgment.

APPEAL TO THE SUPREME COURT

Although the Income Tax Ordinance, 2001 does not provide the provisions regarding appeal against the orders of High Court before the Supreme Court, yet any of the parties may prefer an appeal as permitted by the constitution.

While filing an appeal under the Income Tax Ordinance, 2001, the appellant shall have to follow the provisions of the Code of Civil Procedure, 1908 relating to the appeals against the decree issued by the High Court.

Decision of the Appeal

Any appeal filed before the Supreme Court concerning disputes under the Income Tax ordinance, 2001 shall be heard by bench constituted for this purpose.

The Court, after complete examination of the case, shall give its judgment. The Court's judgment shall be communicated to the Appellate Tribunal, which shall pass the necessary orders for the complete implementation of the judgment. The cost of the appeal shall be borne by the parties, as decided by the Supreme Court. The Court has discretionary power in this regard.

ALTERNATIVE DISPUTE RESOLUTION (ADR) [134A & Rule 231C]

ADR (introduced in income tax law in 2004) is resolving the income tax disputes through an alternate mechanism. ADRC and its functions shall be regulated by the notified rules. Subject Matter and Conditions of ADR [134A(1) & (2)]

Subject Matter

Dispute pertaining to the following issues may be referred to ADR: 1

The liability of tax of Rs. 50 million or above;

2. The admissibility of refund;

3. The extent of waiver of default surcharge and penalty; or 4

Any other specific relief required to resolve the dispute.

Conditions

1. The application shall contain the details of the hardship or dispute. Where criminal proceedings have been initiated, matter cannot be referred to ADR.
2. Application for ADR shall be accompanied by:
 - i) An initial proposition for resolution of the dispute (including an offer of tax payment); and
 - ii) An undertaking that the applicant shall accept the decision of the ADRC in all respects and shall on receipt of the decision immediately withdraw any pending litigation or cases connected with the dispute (whose details are mentioned in the application).

Statutory Entitlement (SOE)

Where the aggrieved person is SOE, the limit of tax liability of Rs. 50 million or above shall not apply. It shall be mandatory for SOE to apply for appointment of ADRC for the resolution of any dispute.

No suit, prosecution, or other legal proceedings shall lie against the SOE or the ADRC in relation to the dispute resolved u/s 134A.

The SOE shall immediately withdraw all relevant pending litigation and cases and mention the details thereof in the undertaking.

The SOE may file an appeal to ATIR or a reference to the High Court or a petition for leave to appeal to the Supreme Court, where ADRC is dissolved.

Procedure of ADR [134A(1), (4) to (6) & (8)]

1. An applicant may apply to the FBR for appointment of alternate dispute resolution committee (ADRC) for resolution of any hardship or dispute mentioned in the application on a prescribed form.

'Applicant' means an aggrieved person or a class of persons (in case identical issues are involved) who has brought a dispute for resolution u/s 134A. [R-231C(2Xa)]

2. The FBR, if satisfied after examination of the application, shall appoint and notify ADRC within fifteen (15) days of the receipt of application.
3. The FBR shall communicate the order of appointment of ADRC to the:
 - r) Aggrieved person;
 - ii) Court or the appellate authority where the dispute is pending; and
 - iii) Concerned Commissioner.
4. The recovery of tax payable by a registered person in connection with any dispute shall be deemed to have been stayed on constitution of ADRC till earlier of the final decision by the ADRC or its dissolution.
5. The aggrieved person shall pay the tax within the time decided by the ADRC. In that case, all decisions and orders made or passed shall stand modified to that extent.
6. ADRC shall function under the rules notified by the FBR,

Decision by ADRC [1344(5) to (9)]

1. ADRC shall decide the dispute within 42045 days of its appointment. Decision period may be extended by another 15 days through a written order containing reasons for extension.
2. ADRC shall decide the dispute by majority.
3. The decision by the ADRC shall not be cited or taken as a precedent in any other case or in the same case for a different tax year.
4. The decision of the ADRC shall be binding on the CIR and the aggrieved person.

Failure of ADRC in Deciding the Dispute [134A(11) to (13)]

1. FBR shall dissolve the ADRC if it fails to decide within 60 days of its appointment. FBR shall communicate the order of dissolution of ADRC to the aggrieved person, court or the appellate authority and the CIR.
2. On dissolution of ADRC, the matter shall be decided by the court or the ATIR within ninety (90) days of the communication of dissolution order.

Alternative Dispute Resolution Committee (ADRC) t1 344(3)

ADRC shall have three members consisting of the following members:

1. A retired judge not below the rank of a judge of a High Court nominated by FBR from a panel notified by the Law and Justice Division for such purpose. This member shall be the Chairperson of the ADRC;
2. CQIR Having jurisdiction over the case; and
3. A person to be nominated by the taxpayer from a panel notified by FBR comprising of:
 - r) CAs, CMAs, advocates having at least 10 years' experience in the field of taxation;
 - ri) * Retired Officers of Inland Revenue (retired in BS 21 or above); and
 - iii) Reputable businessmen nominated by Chambers of Commerce and Industry.

The taxpayer shall not nominate a chartered accountant or an advocate if the said chartered accountant or the advocate is or has been an auditor or an authorized representative of the taxpayer.

Remuneration of ADR C [1344(14)]

FBR shall prescribe the remuneration for services of members of ADRC. CCIR shall not be entitled to receive the remuneration.

BURDEN OF PROOF [136]

In any appeal made by a taxpayer under the Income Tax Ordinance lie 2001 the burden of proof sha ll on the taxpayer. He shall have to prove that:

1. The order does not correctly reflect his tax liability for the year; 2.

The decision is erroneous.

Note: Section 136 deals only with an appeal filed by taxpayer. It is silent about the appeals filed by the tax department. Under such a case, general rules are applied. Where an appeal is filed by the tax department, the burden of proof shall be upon the tax department and not on the taxpayer.

REPRESENTATTVES [172]

For the purposes of the Income Tax Ordinance, 2001, the following persons are representatives of taxpayers:

S. No.	Type of Percon	Representative
1	An individual who is under a legal disability (e.g., minor, person of unsound mind).	The guardian, or manager who receives or rs entitled to receive income on behalf, of or for the benefit of the individual.
2	A company (other than trust, Provincial Government or Local Government).	The principal officer of the company.
3	A Trust.	Any trustee of the trust.
4	A Provincial Government or a Local Government.	Any individual responsible for accor.rnting for the receipts and payments on its behalf.
5	Association of Persons.	The principal officer of the AOF or any partner of a firm.
6	Federal Government.	Any individual responsible for accounting for the receipts and payments on behalf of the Federal Government.
7	A Public international organization, a foreign government or a political sub-division of a foreign government.	Any individual who is responsible for accounting for the receipts and payments in Pakistan on behalf of the organization, government or political subdivision.
8	Non-resident person.	Any person in Pakistan: i) Who is employed by or on his behalf; ii) Who has any business connection with him;

	iii) Who receives any income on his behalf; iv) Who holds or controls the receipts or disposal of any money belonging to him; vi) Who is his trustee; or vii) Who is declared by CIR as representative of the non-resident.
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Notes:

- Where a Court appoints any person as Court of Wards, the Administrator, Official Trustee, Receiver, Manager or Liquidator in respect of a taxpayer, then such person shall be the representative of the taxpayer. 1172(3)
- 'Business connection' includes transfer of an asset or business in Pakistan by a nonresident.
- An independent broker in Pakistan who does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be treated as a representative of the non-resident principal, if:
 - The transactions are carried on in the ordinary course of business; and
 - The non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal. 1172(4)
- A person cannot be declared as a representative of a non-resident unless he has been given opportunity of being heard. 1172(5)

LIABILITIES AND OBLIGATIONS OF A REPRESENTATIVE 1173

Under the Income Tax Ordinance a representative shall have the following liabilities and obligations:

- He shall be responsible for performing any duties or obligations (including payment of tax) imposed on the person under the Ordinance;
- A representative is liable for the tax liability of a person only to the extent of any assets held by him on behalf of such person;
- He is entitled to recover any amount from the taxpayer paid to the tax authorities on behalf of the taxpayer; and
- A representative shall be personally liable for the payment of any tax if he disposes of the assets representing during a period while the tax liability remains unpaid.

Notes:

- where a representative fails to perform any obligation under the ordinance, the original taxpayer shall remain liable for his duties and obligations imposed on him. This does not relieve the person to whom he is representing from any liability under the Income Tax Ordinance.
- A representative may retain out of any amount

his estimated tax liability in case of dispute between the principal and the commissioner. The Commissioner shall to the principal a sum equal to the principal and the commissioner.

APPEARANCE BY AUTHORIZED REPRESENTATIVE [223]

During the proceedings under the Income Tax Ordinance, a taxpayer may appoint some other person to appear before any tax authority as his authorized representative. The following persons may be authorized to appear on behalf of a taxpayer:

1. A relative of the taxpayer;
2. A person who is currently a whole time employee of the taxpayer;
3. Any officer of a Scheduled Bank with which the taxpayer maintains a current account or has other regular dealings;
4. Any legal practitioner who is entitled to practice in any Civil Court in Pakistan;
5. A Chartered Accountant;
6. A Cost and Management Accountant;
7. A member of any association of accountants recognized in this behalf by FBR; or
8. An Income Tax Practitioner registered under the Income Tax Ordinance.

Recognized Associations of Accountants [223(11) & Rule-225]

For the purpose of section 223, the FBR has recognized the following bodies as association of accountants:

1. The Institute of Chartered Accountants of England and Wales;
2. The Institute of Chartered Accountants of Scotland;
3. The Institute of Chartered Accountants of Ireland;
4. The Society of Incorporated Accountants and Auditors, London; and
5. The Association of Certified Accountants, United Kingdom.

Ineligibility of Authorized Representative [223(3)]

The following persons cannot be appointed as authorized representative to appear before any tax authority on behalf of a taxpayer:

1. A person who has been dismissed or removed from service in the Income Tax Department.
2. An insolvent
4. A person who has resigned from his service in the Income Tax Department and whose service was not less than two (2) years. Such a person may become eligible after the expiry of two years from the date of resignation.
5. A person who has retired from service in the Income Tax Department, for a period of one year from the date of retirement.
- b. A person who has been convicted of any offence connected with any income tax proceedings.

MISCONDUCT BY AUTHORIZED REPRESENTATIVE [223(4) to (9)]

An authorized representative has to follow the rules of professional ethics during his practice. A person who is found guilty of misconduct cannot represent other persons. Legal provisions in this regard are summarized below.

1. A legal practitioner or an accountant may be declared as guilty of professional misconduct by any authority entitled to take disciplinary action against him. Decision of that authority shall also be effective for tax purposes. 1223(4)]
2. In case of an authorized representative other than a legal practitioner or an accountant the Commissioner of Income Tax may direct that he has ceased to represent the taxpayer before tax authorities, if such person is found guilty of misconduct. 1223(5)]
3. The Commissioner shall issue the above-referred direction in writing and after providing the concerned person an opportunity of being heard. 1223(6)]
4. Any person who is convicted as above may appeal to FBR for cancellation of the order of Commissioner. The appeal may be filed within thirty (30) days of the service of order. The FBR may admit the appeal after the expiration of this period if it is satisfied that there existed some sufficient cause which prevented the appellant from lodging the appeal within the period. [223(7) A (8)]
6. The order of Commissioner shall be effective after:
 - (i) Expiration of thirty (30) days from the date on which order is served; or
 - (ii) The disposal of appeal by FBR, if the person has lodged an appeal against the order of Commissioner. [223(9)]

REGISTRATION AS INCOME TAX PRACTITIONER 1223(10)]

The Income Tax Practitioners are registered by FBR, which is empowered to frame and regulate the provisions regarding registration and related matters. It may also establish a code of conduct for Income Tax Practitioners.

COMPUTATION OF LIMITATION PERIOD [226]

In computing the limitation period for appeals and other applications under the Income Tax Ordinance, the day on which the order complained of was served shall be excluded. If the taxpayer was not provided with a copy of order, the reasonable time required for obtaining the orders shall also be excluded.

In the case of any assessment or other proceedings, the period for which such proceedings were stayed by or the period, if any, for which any proceeding for the tax year remained pending before any Court, Appellate Tribunal or any other authority shall also be excluded while computing the limitation period.

BAR OF SUITS IN CIVIL COURTS [227]

No Civil Court has jurisdiction against an order passed or any notice issued under the Income Tax Ordinance, 2001. Further no prosecution, suit or other proceeding shall lie against any person for anything done or intended to be done, in good faith, under any provisions of the Ordinance or Rules, orders made or any notice issued under the Ordinance.

'Civil Court' includes any court exercising power of the civil court.

Prior approval of the FBR shall be required for undertaking or initiating any investigation or inquiry by any governmental agency against any officer or official for anything done in his official capacity under the Income Tax Ordinance, Income Tax Rules or instructions or directions thereunder.

PROCEEDINGS UNDER THE INCOME TAX ORDINANCE [224]

Any proceedings under the Income Tax Ordinance before any tax authority (i.e., Commissioner, Commissioner (Appeals) or Appellate Tribunal) shall be treated as judicial proceedings u/s 193, 196 and 228 of the Pakistan Penal Code, 1860 (PPC).

The above-referenced sections of PPC deal with crime relating to false evidence and insult of public servant sitting in judicial proceedings.

PROCEEDINGS AGAINST PUBLIC SERVANTS UNDER SQUAD [225]

Section 310 of the Companies Act, 2017 provides that when a winding-up order has been made or a Provisional Manager has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court. However, according to section 225 of the Income Tax Ordinance, 2001, leave of the Court shall not be required for continuing with or commencing any proceedings under the Income Tax Ordinance against such a company. It is to be noted that section 3 of the Income Tax Ordinance rules out any such provision of any other law, which is contrary to the Income Tax Ordinance.

JURISDICTIONS OF THE COURTS, etc. 1216(2)

Beyond the provisions of the Income Tax Ordinance, 2001 no court or authority is entitled to require any public servant to produce before it any return, accounts or documents relating to any proceeding under the Ordinance. It cannot enforce him to give evidence before it for any matter relating to the proceedings under the Income Tax Ordinance.

FORA OF APPEALS**SUMMARY OF IMPORTANT PROVISIONS**

	Appellate Authorities			
	Commissioner (Appeals)U	Appellate TribunalU	High CourtU	Supreme CourtU
Pecuniary Jurisdiction +	Value of Tax or Refund Upto Rs. 20 Million	Value of Tax or Refund more than Rs. 20 Million	No Limit	No Limit
Appellant +	Only the Taxpayer	Only the Taxpayer	Any of the parties	Any of the parties
Appeal Against the Order of+	CIR	CIR (Appeals)	AT	High Court
Days for Appeal=	30 Days	30 Days	30 Days	As per CPC, § 908
Appeal Fee +	Assessment cases: Company: Rs. 5,000 Other person: Rs. 2,500 All other cases: Company: Rs. 5,000 Other person: Rs. 1,000	Company: Rs. 20,000 Other person: Rs. 5,000	Rs. 50,000	As per CPC, § 908
Any Other Condition:+	Appeal against assessment shall be made only if tax payable u/s 137(1) of ITO has been paid or stay against its payments has been obtained.	Appeal against assessment shall be made only if tax payable u/s 137(1) of ITO has been paid or stay against its payments has been obtained.	<ul style="list-style-type: none"> Appeal lies only if 'point of law' or 'mixed question of law and fact' is involved. Tax as per CIR(A) or ATIR decision is paid or stay has been obtained after deposit of at least 30% of tax determined by last appellate forum. 	As per CPC, § 908
Decision Period=	120 days from the date of filing of appeal. May be extended upto further 60 days.	Ninety (90) days Appeals pending before 03-05-2024 shall be decided in 180 days	Six (6) months from the date of filing of appeal	Not fixed
Decisions:+	<ul style="list-style-type: none"> Confirm, modify or annul the assessment order. Make such orders as deemed fit. 	<ul style="list-style-type: none"> Affirm, modify or annul the assessment order Remand the case to CIR Issue consequential directions 	Make any order which is deemed fit.	Make any order which is deemed fit.

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FURNISHING OF DIFFERENT STATEMENTS [165 & Rule-42 to 45]

The Income Tax Ordinance, 2001 requires certain persons to furnish different statements to the Commissioner Inland Revenue during or after the close of the income year. The legal provisions in this regard are summarized below:

1. Every person collecting or deducting tax at source under various sections of the Income Tax Ordinance, 2001 or the Tenth Schedule shall furnish respective statements in the form prescribed under Rule-44 and 45 of the Income Tax Rules, 2002.
2. This statement shall be biannual and shall contain the following information:
 - i) Name and address of each person from whom tax has been deducted or collected;
 - ii) Amounts paid to the person from which tax has been deducted or collected;
 - iii) Total amount of tax deducted or collected; and
 - iv) Other particulars as specified in the Rules.
3. Every withholding agent shall be required to file withholding statement even where no withholding tax is collected or deducted during the period.
4. Statement u/i 165 shall not be furnished if the person has submitted the information required u/s 165(1).
5. Every person who is involved in prescribed economic transactions shall furnish to CIR a quarterly statement in the prescribed form and manner.
6. The statements shall be filed on quarterly basis as per the following schedule:

Quarter Ending On	Last Date of Filing of Statement
31 st March	20 th April
30 th June	20 th July
30 th September	20 th October
31 st December	20 th January

7. The Commissioner, as he deems fit, may require any person (i.e., the withholding agent) to furnish a statement. The notice shall contain the period for which the statement is required and the period within which it is to be furnished, 165(28)
8. A person may apply to Commissioner for an extension of time for furnishing the statement after the due date. The Commissioner, if satisfied that a reasonable cause exists for nonfurnishing of the statement by the due date, may grant the extension. [165(4)]
9. The FBR may prescribe a statement requiring any person to furnish information periodically in respect of any transactions. For this purpose it may prescribe the form and also the manner of furnishing the information. [165(3)]
10. The FBR may make rules relating to electronic furnishing of statements and other related matters including mandatory electronic filing of statements and determination of eligibility of the data of such statements and e-intermediaries, etc. [165(5)]

11. Statements for withholding tax shall be filed in respect of any deduction or collection made by a taxpayer under any of the provisions of the Income Tax Ordinance, 2001

FURNISHING OF INFORMATION BY BANKS [165A]

It is obligatory on a banking company to provide certain information to the FBR irrespective of any contradictory provisions contained in any law including the following laws: 1

The Banking Companies Ordinance, 1962;

2. The Protection of Economic Reforms Act, 1992

3. The Foreign Exchange Regulations Act, 1947, and

4. The Regulations made under the State Bank of Pakistan Act, 1956.

A banking company has to provide to the FBR the following facilities, information and documents: 1

A list of persons containing particulars of cash withdrawals exceeding Rs. 50,000 in a day and tax deductions thereon, aggregating to Rs. 1,000,000 or more during each preceding calendar month;

2. A list containing particulars of deposits aggregating Rs. 10,000,000 or more made during the preceding calendar year;

3. A list of payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to Rs. 200,000 or more during the preceding calendar month;

and

4. A list of persons receiving profit on debt and tax deductions thereon during preceding financial year.

The FBR may also require certain other information and documents. For this purpose each banking company shall nominate a senior officer at the head office to coordinate with the FBR.

The banking companies and their officers are protected against any civil, criminal or disciplinary proceedings for providing information under the Income Tax Ordinance, 2001.

All information received by the FBR shall be used only for tax purposes and confidential. shall be kept

FURNISHING OF INFORMATION BY FINANCIAL INSTITUTIONS [165B]

It is obligatory on every 'financial institution' (including banks) to make arrangements to provide information to the FBR regarding non-resident or any other 'reportable person'. The information shall be provided in the prescribed form and manner for the purpose of automatic exchange of information under bilateral agreement or multilateral convention.

The information is to be provided irrespective of any contradictory provisions contained in any law for the time being in force, including the following laws:

1. The Banking Companies Ordinance, 1962;

2. The Protection of Economic Reforms Act, 1992;

3. The Foreign Exchange Regulations Act, 1947; and

4. The Regulations made under the State Bank of Pakistan Act, 1956.

All information received by FBR from financial institutions shall be used only for tax and related purposes and kept confidential. [165B(2)]

'Reportable Person' means a person other than the following:

- 1' A corporation the stock of which is regularly traded on one or more established securities markets;
2. Any corporation that is a Related Entity, A of above referred corporation;
- c. Governmental Entity;
4. An International Organization;
- . A Central Bank; or
- . A Financial Institution. [Rule-7SB(a)]

5 'Related Entity' means if either entity controls the other Entity, or two Entities are under common control. For this purpose control included direct or indirect ownership of more than fifty percent of the vote and value in an Entity. [Rule-7gB(a)]

6 'Financial Institution' means a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company. [Rule-7SB(c)]

TAXPAYER'S REGISTRATION [181]

Section 181 contains certain provisions regarding registration of taxpayers, which are enumerated below:

1. Every taxpayer is required to apply for registration. The application shall be made in the prescribed form and in the prescribed manner.
2. The Commissioner having Jurisdiction over a case may also register a taxpayer in the prescribed manner if so necessitated by the facts of the case.
3. Taxpayers' registration scheme shall be regulated through the rules to be notified by the FBR.
4. In case of individuals having CNIC issued by NADRA, CNIC shall be used as NTN.

Rules 79 through 83 of the Income Tax Rules, 2002 deal with the matters relating to the NTN. The provisions of the Rules are summarized below:

1. The application for NTN shall be submitted in the form specified in part-VIII of First Schedule to the Income Tax Rules.
2. The application shall be accompanied by a documentary evidence of the applicant's entity. For this purpose the following documents are used:

Person	Document
An individual.	NIC, current passport or other document having photograph of the individual (e.g., driving licence).
A Company (other than a Trust).	Certificate of incorporation or registration.
A Trust.	The Trust deed.
A firm.	The partnership deed.
An association of persons (other than firm).	The instrument through which the AOP is constituted.

3. In case of an AOP, the details of non-resident members, if any, shall also be provided.

4. The application for NTN may be given either by hand or through post. It may also be submitted along with the first return of income.
5. The Commissioner shall issue the NTN Certificate within fifteen (15) days of the submission of the application or he will intimate the applicant, in writing, about the reason for its non-tssuance.
6. The Commissioner may after giving an opportunity of being heard cancel the NTN. The Commissioner's order for cancellation of NTN shall contain the reasons on which it is made.
7. Every person who holds NTN shall display it at a conspicuous place at his every place of business. NTN shall also be quoted in the following documents:
 - i) Allcommercid transaction entered into bythe taxpayer;
 - ii) Cash memos rssued;
 - iii) Returns and statements furnished by him to the Commissioner;
 - iv) Any correspondence with the Commissioner;
 - v) Application for new utility connections (e.9., gas, water, electricity and telephone) ;
 - vi) Lo'an agreement with a bank or a financial intuition;
 - vii) Opening a letter of credit; and
 - viii) Transferring an immovable property located in an urban area.

E-ENROLLMENT [Rule 80A, 80B & 81]

Every individual, an AOP, a company or a foreign government required to e-file return of total income shall submit prescribed form of e-enrolment through FBR's online system.

A person shall submit the nformation and documents as prescribed under Rule 80 B of ITR.

The Commissioner may, within 15 days of application, grant registration (e-enrollment) or refuse the same. An aggrieved person may, within 30 days of the order of the Commissioner, file a representation before the ,hief Commissioner, who shall decide after making necessary inquiry.

ACTIVE TAXPAYERS' LIST [181A & Rule-81 B]

The FBRshall have the power to institute 'active taxpayers' lis(ATL). This list shall be regulated in accordance with the Rule - 81 B of the Income Tax Rules; 2002. Applicable rules in this regards are as below:

1. FBR shall publish and made available on its web portal the ATL by first day of March in each financial ,ear; The ALT shall be valid from the date of its publication till the last day of February in the following year.
2. The'updataion date' of ATL shall be every Sunday at24:00 hours. A person who fulfills the prescribed criteria shall be included in ATL on the immediately following updataion date.
3. A person's name shall be included in ATL if return uls 114 or statement U/s 115 has been filed by the due date.
4. Where a company or an AOP is formed after 30th June and due to this reason return is not due to be file, the name of such person shall be entered in ATL without filing of return.

Notes:

1. Where some persons have joint account in a bank, they shall be treated as an entity and if any of the persons in the joint account meets the criteria for inclusion in ATL, the entity shall be deemed to have met the criteria.
2. A joint account holder in a bank shall be deemed to have met the criteria for inclusion in ATL if the parent, guardian or any person who has made deposits in his account meets the criteria.
3. Section 182A of the Income Tax Ordinance, 2001 specifies that where return is not filed by the due date or within time extended by FBR or CIR (which includes late filing of return), the person shall not be entitled to be included in ATL in that tax year.

COMPULSORY REGISTRATION IN CERTAIN CASES [181AA]

Any application for commercial or industrial connection of electricity or natural gas shall not be processed and such connection shall not be provided unless the person applying for connection is registered u/s 181.

TAXPAYER CARD [181B]

In order to motivate individual taxpayers and give incentive to them the FBR may make a scheme for introduction of "Taxpayer Honour card". It shall be issued to such individuals who fulfill the minimum criteria to render them eligible for the benefits contained in the scheme.

DISPLAYING OF NTN [181C]

It is mandatory on every person deriving taxable business income and is having NTN to display his NTN at a conspicuous place at every place of his business.

BUSINESS LICENCE SCHEME [181D]

Every person engaged in any business, profession or vocation shall be required to obtain and display a business licence as prescribed by the FBR.

1. The CIR may impose the following fines if a person fails to obtain the required business licence:
 - i) Person deriving income taxable under Income Tax Ordinance: Rs. 20,000
 - ii) all other cases: Rs. 5,000
2. This fine is in addition to and not in derogation of any punishment to which the person may be liable under any law, including the Income Tax Ordinance.
3. The CIR may cancel a business licence already issued if the person:
 - i) Fails to notify any change in particulars within thirty days of such change; or
 - ii) Is convicted of any offence under any federal tax law.
4. Cancellation of licence shall be made after providing an opportunity of being heard to the person and through a written order.

RECEIPT OF INCOME [69]

A person shall be treated as having received an amount, benefit or perquisite if it is:

1. Actually received by him;

2. Applied on his behalf at his instruction;
 - Applied on his behalf under any law; or
 - Made available to him (e.g., transferred to the credit of a person's bank account).

3 RECOUPED EXPENDITURE [70]

Where a person has received any amount in respect of such an expenditure been or loss which has allowed as deduction while computing income under any head of income, be such amount shall taken as income under the same head for the year in which it is received.

CURRENCY CONVERSION [71]

The calculation under the Income Tax Ordinance, 2001 shall be in Rupees. In case of a foreign currency transaction, the amount shall be converted into Rupees. The State Bank of Pakistan rate on the date the amount is taken into account shall be used for converting the foreign currency into Pak Rupees.

INCOME FROM A CEASED SOURCE OF INCOME [72]

An income shall be chargeable to tax in the tax year in which it is received, if the following conditions are satisfied:

1. The income is received from such source that has ceased before or during the tax year; and The income would have been taxable if the source had not ceased.

PRINCIPLE REGARDING RECOGNITION OF INCOME OR EXPENDITURE [73]

While computing the taxable income of a person any method of accounting (i.e., cash-basis or accrual-basis) may be used subject to the rules laid down by the law. However, while recognizing an income or allowing a deduction for expenditure it should be ensured that the same transaction is not recorded twice (i.e., at the time of accrual as well as at the time of payment or receipt).

TRANSACTION BETWEEN ASSOCIATES [108]

Legal provisions in respect of any transaction between persons who are associates are as below:

1. The Commissioner (CIR) may distribute, apportion or allocate income, deductions or tax credits between the persons as is necessary to reflect the income that the persons would have realized in an arm's length transaction;
2. While making adjustment the CIR may determine the source of income and the nature of any payment or loss as revenue, capital or otherwise
3. Every taxpayer who has entered into a transaction with associate shall maintain and furnish to the FBR the following records:
 - i) Master file and a local file containing the prescribed documents and information;
 - ii) Prescribed country-by-country report, where applicable; and
 - iii) Any other prescribed information and document in respect of the transaction.
4. The above mentioned files, documents, information and reports shall be kept for a period as may be prescribed.

5. Where the CIR so requires under any proceedings, the documents and information shall be furnished to him within thirty (30) days of the requisition.
6. The CIR may grant extension in the time for furnishing of documents, etc., if so applied by a taxpayer. The extension should be for a maximum period of 45 days. Under the exceptional circumstances the extension may be for a longer period.
7. Twenty five percent (25%) total expenditure for the tax year on sales promotion, advertisement and publicity shall be disallowed to a person and allowed to its associate if:
 - i) The person has claimed a deduction for the current tax year or any of the two preceding tax years on account of royalty paid or payable to an associate. Payment may be made directly or indirectly;
 - ii) Royalty expense is for use of any brand name, logo, patent, invention, design or model, secret formula or process, copyright, trademark, scientific or technical knowledge, franchise, license, intellectual property or other like property or right or contractual right; and
 - iii) On a notice issued by the CIR, the taxpayer fails to furnish evidence any explanation or that no benefit has been conferred on the associate.

This provision applies for the tax year 2024 and onwards.

REPORT FROM INDEPENDENT ACCOUNTANT [108A]

For the purpose of determining the FMV of the asset, product, expenditure or service at the time of transaction, the Commissioner, with prior approval of the FBR, may obtain report from an independent chartered accountant or cost and management accountant. The relevant provisions are as below:

1. Such report may be obtained if the Commissioner is of the opinion that a transaction has not been declared at arm's length.
2. The scope, terms and conditions of the report shall be regulated by the rules.
Where the Commissioner is satisfied with the report of the accountant the FMV as determined in the report shall be treated as definite information u/s 122(g).
3. Where the Commissioner is not satisfied with the report of accountant, the Commissioner may record reasons for dissatisfaction and seek report from another independent accountant, to determine the FMV of asset, product, expenditure or service at the time of transaction.

TRANSACTIONS UNDER DEALERSHIP ARRANGEMENTS [108B]

Seventy-five percent (75%) of the dealer's margin shall be added to the income of the person making the supplies, if:

1. The supplier is supplying the products listed in the Third Schedule to the Sales Tax Act, 1990 or any other products prescribed by the FBR;
2. The products are being supplied under a dealership arrangement with such dealers who are not:
 - i) Registered under the Sales Tax Act, 1990;
 - ii) Appearing in the active taxpayers' list under the Income Tax Ordinance,

Not", For this purposes, ten percent (10%) of the sale price of the manufacturer shall be treated as dealers' margin. In other words 7.5% of the manufacturer's sale price shall be added to his income.

RECHARACTERISATION OF INCOME AND DEDUCTIONS 11091 For

the purpose of determining tax liability, the CIR may:

1. Recharacterise a transaction or an its element that was entered into as part of a 'tax avoidance scheme';
2. Disregard a transaction that does not have substantial economic effect;
3. Recharacterise a transaction where the form of the transaction does not reflect the substance; or
4. Disregard an entity or a corporate structure that does not have an economic or commercial substance or was created as part of the tax avoidance scheme.

'Tax avoidance scheme' means any transaction where one of the main purposes of a person in entering into the transaction is the avoidance or reduction of any person's tax liability.

'Reduction in a person's tax liability' means a reduction, avoidance or deferral of tax or increase in a refund of tax. It also includes a reduction, avoidance or deferral of tax that would have been payable under the Income Tax Ordinance, 2001, but are not payable due to a tax treaty for avoidance of double taxation (as referred to in section 107).

APPLICATION OF INCOME TAX ORDINANCE ON ERSTWHILE TRIBAL AREAS 121

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The Constitution (Twenty-Fifth Amendment) Act, 2018 received the assent of the President on 31st May, 2018. This Act merged the tribal areas (as mentioned in Article 246 of the Constitution) in the Provinces of Balochistan and KPK. While making other consequential amendments in the Constitution it also omitted Article 247, which provided that an Act of the Parliament shall not apply to the Tribal Areas.

With effect from May 31, 2018 the ITO is in force to the erstwhile Tribal Areas. It created hardship for the individuals and businesses of those areas. In order to restore the position prior to the 25th Amendment, the following exemptions are granted.

Exemption from Tax [Clause (146) of Part-I of Second Schedule]

Any income which was not taxable prior to the merger of erstwhile Tribal Areas will be exempt from tax from 01-06-2018 to 30-06-2023.

Exemption from Tax Withholding [Clause (1 10) of Part-IV of Second Schedule]

The provisions of deduction or collection of withholding tax (sections 149 to 158 & 231A to 236Y) which were not applicable prior to the merger of erstwhile Tribal Areas shall not be applicable to individuals domiciled or companies and AOPs resident in those areas for a period from 01-06-2018 to 30-06-2023.

CAPITAL AND REVENUE

The distinction between capital and revenue is of great importance in preparation and presentation of financial statements. The capital expenditures are shown in balance sheet whereas the revenue in the profit and loss account. It is also important for the income tax purposes because, generally,

the revenue incomes and the revenue expenditures are taken into account while computing the total income and the tax liability of a taxpayer. The only exception is the inclusion of gain or loss on disposal of a fixed asset and a capital asset. The rules in respect of classification of expenditures into the capital or revenue are summarized below:

CAPITAL EXPENDITURES.

An expenditure shall be a capital expenditure if it is incurred for:

1. Acquisition of fixed asset.
2. Improvement and extension of a fixed asset.
3. Increasing the profitability or earning capacity of the business.
4. Raising capital.

REVENUE EXPENDITURES

An expenditure shall be a revenue expenditure if it is incurred for: 1.

Purchase of assets for resale purpose (floating assets).

2. Maintenance of fixed assets.
- Payment of day-to-day expenses necessary for the business.

ACTIVE TAXPAYERS' LIST [181A]

The FBR shall have the power to institute "active taxpayers' list". This list shall be regulated in accordance with the rules as may be prescribed by the FBR.

Active Taxpayer's List [2(1A)]

"Active Taxpayers' List" means the list instituted by the FBR under section 181A and includes such list issued by the Azad Jammu and Kashmir Central Board of Revenue or Gilgit-Baltistan Council Board of Revenue-

SPECIAL PROCEDURE FOR PERSONS NOT IN ACTIVE TAXPAYERS' LIST (ATL) [10084 & Tenth Schedule]

Provisions relating to collection or deduction of advance income tax, computation of income and payment of tax thereon and assessment of persons not appearing in the "Active Taxpayers' List" or persons appearing in ATL who have not filed return by the due date u/s 118 or as extended u/s 119 or 214A are as below:

Rate for Deduction or Collection of Tax

1. Tax required to be deducted or collected under any provision of the ITO shall be increased by 100% (double) of the rate specified in the ITO if the person is not appearing in ATL.
2. Tax required to be collected u/s 231B of ITO (on motor vehicles) shall be increased by 200% (double) of the rate specified in First Schedule in case of persons not appearing in the ATL.
3. Tax required to be collected u/s 236K of the ITO (from purchaser on transfer of property) shall be as below:

Fair Market Value of Immovable Property	Tax Rate
Upto Rs. 50 million	12o/o
Exceeding Rs. 50 million but upto Rs. 100 million	16%
Exceeding Rs. 100 million	20%

4. Tax required to be collected under different sections of the IFO shall be as below:

Section	Description -	Tax Rate
151	On yield or profit on debt	35o/o
236C	On the gross amount of consideration received on sale or transfer of immovable property	10Yo
236G	On the gross amount of sale to distributors, dealers or wholesalers other than sale of fertilizer.	2o/o
236H	On the gross amount of sale to retailers	2.5o/o

Persons Appearing In ATL But Have Not Filed Return by Due Date [Rule 1A of 10th Schedule] Rate of tax to be collected in respect of persons who are appearing in ATL but have not filed return of income by the due date u/s 118 or as extended u/s 119 or 214A of ITO shall be as below

Tax u/s 236C of the IFO (from Seller on Transfer of property):

Fair Market Value of Immovable Property	Tax Rate
Upto Rs. 50 million	60/o
Exceeding Rs. 50 million but upto Rs. 100 million	70/o
Exceeding Rs. 100 million	80/o

- Tax u/s 236K of the IFO (from Purchaser on Transfer of property):

Fair Market Value of Immovable Property	Tax Rate
Upto Rs. 50 million	60/o
Exceeding Rs. 50 million but upto Rs. 100 million	70/o
Exceeding Rs. 100 million	80/o

Non-Application of Rule 1A of 10th Schedule

Rule 1A shall not apply to a person who has filed return by the due date specified in section 118 or as extended u/s 119 or 214A of ITO for all of the last three tax years, preceding the tax year for which the return has not been filed by the due date.

Persons Not Required to File the Return

1. In case of a person who is not required to file return u/s 114 of the IFO, the withholding agent shall electronically furnish a notice to the CIR (before tax withholding) containing the following information about that person:

- i) The name, CNIC or NTN and address of the person;
- ii) The nature and amount of the transaction subject to tax withholding; and
- iii) The reason why the person is not required to file the return.

2. [The CIR shall pass an order accepting or rejecting the contention. It shall be deemed that CIR has accepted the contention if no order is passed within 30 days of the receipt of notice.

In case of rejection, the CIR may direct the withholding agent to withhold the applicable tax.

3.

Provisional Assessment

1. The person from whom tax is withheld is required to file return within 60 days of the due date provided in section 118 or as extended by FBR.
2. Where the return is not filed, the CIR shall issue a provisional assessment order specifying the taxable income and the tax due. While making the provisional assessment:
 - i) The CIR shall determine the 'imputable income' considering the tax withheld.
 - ii) The imputed income shall be considered as concealed income u/s 111(d).
 - iii) Any unexplained income, asset or expenditure in excess of imputed income shall be treated as concealed income and provisions of section 111 shall apply thereon.
3. The imputable income or concealed income determined and treated as above shall not absolve the person so assessed from:
 - i) The requirement of filing of wealth statement u/s 116(1);
 - ii) Explanation u/s 111 about the nature and source of amounts subject to withholding tax;
 - iii) Selection for audit u/s 177 or 24C; or
 - iv) Subsequent amendment of assessment.

Status of Provisional Assessment

1. The provisional assessment shall be treated as final after expiry of 45 days from the date of service of the provisional assessment order.
2. The provisional assessment order shall abate, if returns and wealth statement for the relevant tax year and the preceding tax year are filed within the above-referred 45 days. Under this case, the returns filed shall be taken to be assessment finalized u/s 120(1) of ITB.
3. Where return is filed before, or within 45 days of, the provisional assessment order, the tax withheld shall be adjustable in the return filed for the relevant tax year.

Imposition of Penalty

Within 30 days of treating the provisional assessment as final assessment (on non-filing of returns and statements), the CIR may initiate proceedings for imposition of penalties u/s 182 on account of non-furnishing of return and concealment of income.

Non-Compliance by Withholding Agent

The withholding agent shall furnish complete particulars of the persons not appearing on the active taxpayers' list in statement u/s 165, in case of default, the CIR, within 30 days of filing of the statement, shall initiate proceedings against the withholding agent u/s 192 and 191,

Amendment of Assessment

Under the following cases the CIR may amend the assessment order:

1. Where on the basis of 'definite information' acquired from an audit or otherwise, the CIR is satisfied that:
 - i) Any income has escaped assessment;
 - ii) Total income is under-assessed, assessed at too low a rate or has been the subject of excessive relief or refund; or
 - iii) Any amount has been misclassified.
2. Where, under any of the following cases, an assessment order is considered erroneous in so far as it is prejudicial to the interest of revenue:
 - i) A provisional assessment order is treated as final;
 - ii) A return is filed in response to a provisional assessment order; or
 - iii) The return is amended by CIR on the basis of definite information.

Application of the Income Tax Ordinance' 2001

In case of proceedings against such persons, the provisions of the ITO shall mutatis mutandis apply.

Example

Asim is not appearing in the active taxpayers' list. On 17th August 20x1 he purchased a plot having FBR Value of Rs. 14,500,000. The transferring authority, besides other dues, collected Rs. 1,450,000 as advance tax u/s 236K (being 10% of FBR value). Due date for filing of return is 30-09-20x2.

Discuss the possible actions where the CIR makes a provisional assessment on 20-11-20x2 assuming:

1. Asim files the return of income; and
2. Asim does not file return of income.

Provisional Assessment

Under the both cases, the CIR shall make the provisional assessment order, determining the tax as below:

Tax collected u/s 236K	1,450,000
Imputed income (on tax of Rs. 1,450,000 — as per tax table)	5,200,00
Tax payable on Rs. 3,600,000 Tax	0
paid u/s 236K	1,450,00
Net tax payable on provisional assessment	<u>0</u>

Date of Filing of Returns and Wealth Statement

1,450.00

Asim has to file returns of income and wealth statements for tax years 20x1 & 20x2, by 30-09-20x2 (i.e., within 45 days of the date of the provisional assessment order, which is 20-11-20x2).

Where Return is Filed

1. The provisional assessment shall abate and return so filed shall be treated as assessment u/s 120(1) of the ITO.
2. If the source of investment is explained in the wealth statement, no further action for purchase of property shall be initiated.
3. If the source of investment is not explained in the wealth statement, the CIR, after providing an opportunity of being heard, shall amend the assessment and determine the tax liability as below

Total unexplained investment (i.e., value of the property)		<u>14,500,000</u>
Tax on Rs. 14,500,000 as per tax table:		
Tax on Rs. 5,600,000	1,610,000	
Tax on balance of Rs. 8,900,000 @ 45%	4,005,000	5,615,000
Less: Tax paid u/s 236K		<u>1,450,000</u>
Net tax payable		<u>4,165,000</u>

Where Return is Not Filed

1. The provisional assessment shall be treated as finalized.
2. The CIR, after providing an opportunity of being heard, shall amend the assessment and determine the tax liability as below

Total unexplained investment (i.e., value of the property)		<u>14,500,000</u>
Tax on Rs. 14,500,000 as per tax table:		
Tax on Rs. 5,600,000	1,610,000	
Tax on balance of Rs. 8,900,000 @ 45%	4,005,000	5,615,000
Less: Tax paid u/s 236K		<u>1,450,000</u>
Net tax payable		<u>4,165,000</u>

3. The CIR may initiate the penalty and prosecution proceedings under the ITO.

Non-Applicability of Special Procedure

Provisions of the Tenth Schedule shall not apply on tax collectible or deductible under the following sections:

S. No.	Section	Particulars
1.	149	Salary
2.	152	Payments to non-residents. However, it shall be applicable to sub-sections (2A)(a), (2A)(b) and (2A)(c)
3.	152(2)	Tax deducted from profit on debt payable to a non-resident person having no PE. [under clause (5A) of Part-II of Second Schedule]
4.	152(2)	Payment to an individual on account of profit on debt earned on debt securities issued by Federal Government. [under clause (5AA) of Part-II of Second Schedule]

5	154	Exports
b. '	1544	Export of services
7	231A8	Cash withdrawal from banks
8	235	Electricity consumption
o	236	Telephone and internet users
10	374	Capital gain on securities.

REGULATION OF ACTIVE TAXPAYERS' LIST [181A & Rule-81B]

Publishing of ATL

FBR shall publish and make available on its web portal the ATL by first day of March in each financial 'year.' The ATL shall be valid from the date of its publication till the last day of February in the following year.

The 'update date' of ATL shall be every Sunday at 24:00 hours. A person who fulfills the prescribed criteria shall be included in ATL on the immediately following update date.

Criteria for Inclusion in ATL For

All Persons: —

A person who has filed the return u/s 114 by the due date.

For Companies and AOPs Formed After 30th June: —

In this case furnishing of return will not be due. Such person shall be entered in ATL without filing of return.

Joint Holders of a Bank Account: —

These persons shall be treated as an entity, which shall be deemed to have met the criteria if any of the joint account holders meets the criteria.

Minor account holder in a bank: —

Minor shall be entitled for inclusion in ATL if the parent, guardian or any person who has made deposits in his account meets the criteria.

Impact of Non-Filing of Return on ATL [Proviso to 1824(1)(a)]

A person, who has not filed the return of income by the due date or within the date extended by FBR or the CIR, shall not be included in 'active taxpayers' list'. Late filing of return shall have the same consequences.

Inclusion in ATL —

A person shall be included in ATL on filing return after the due date on payment of surcharge at the following rates:

- | | | |
|----|------------|------------|
| 1. | Company | Rs. 20,000 |
| 2. | AOP | Rs. 10,000 |
| 3, | Individual | Rs. 1,000 |

ONLINE INTEGRATION OF BUSINESSES

Integrated Enterprise 12(30A)

'Integrated enterprise' means a person integrated with the FBR through approved fiscal electronic device and software, and who fulfills prescribed obligations and requirements for integration.

Rules 33A to 33G deal with the matters connected with 'integrated enterprise'. Some of those rules are discussed in coming paragraphs.

Application [R-33A]

These rules are applicable to all specified persons whose principal place of business is situated as below:

s.#	Persons	Place of Business
1	Company	Anywhere in Pakistan
2	All other persons	Within the civil limits including cantonments of the following districts: <div style="display: flex; justify-content: space-between;"> <div> 1. Karachi 3. Islamabad A Faisalabad </div> <div> 2 Lahore Rawalpindi 4 Multan </div> </div>

Businesses Subject to Online Integration

The following business, except those which are excluded, (hereinafter called as "integrated enterprise") are required to be online integrated:

S. No.	Description	Exclusion, if any
1	Restaurants	Where - i) The restaurant is operating otherwise than as part of a food court; and ii) The facility of air-conditioning is not installed or available in the premises.
2	Hotels, motels, guest houses, marriage halls, Marquees, clubs including race clubs.	Where- i) The covered area is less than 4500 sq. feet ir) The facility of air-conditioning is not installed or available in the premises.
3	Inter-city travel by road.	Where - i) The taxpayer is only providing non air conditioned travel service; or ii) Travel service maintaining a fleet of less than ten vehicles.
4	Courier services and cargo services	Where - i) The taxpayer is not a company; and ir) The taxpayer is offering only domestic courier or cargo service.
5	Services provided for personal care by beauty parlours, clinics and slimming clinics, body	Where -' i) The covered area is less than 1000 sq. feet; or ii) The facility of air-conditioning is not installed or

	massage centres, pedicure centres; including cosmetic and plastic surgery centres such as Parlours / clinics,	available in the Premises.
6	Medical practitioners and consultants	Where - i) The consultation is being provided at a place other than a hospital or Poly-Clinic; and - ii) The consultation fee is less than Rs. 1500/-.
7	Pathological laboratories, medical diagnostic laboratories including X-Rays, CT Scan, M.R. Imaging etc.	Where - i) The taxpayer is not a company; and ii) The taxpayer is not maintaining more than one branch whether under its own name or through an associate.
8	Hospitals or medical care centres providing medical consultation, hospitalization or other ancillary services	
9	Health clubs, gyms, Physical fitness centres, and body or sauna/massage centres	Where - i) The covered area is less than 1000 sq. feet; or ii) The facility of air-conditioning is not installed or available in the Premises.
10	Photographers	Photographers charging less than Rs. 100,000 per event
11	Accountants	Accountants who are not operating as part of a firm or a company.
12	- Retailers including manufacturer-cum-retailer, wholesaler-cum-retailer, importer-cum-retailer or such other person who combines the activity of retail sale with another business activity.	A retailer who does not fall in any of the following categories, namely:- i) A retailer operating as a unit of national or international chain of stores; ii) A retailer operating in an air-conditioned shopping mall, plaza or center, excluding kiosks; A retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds rupees twelve hundred thousand; iii) A wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to retailers as well as on retail basis to the general body of consumers, or iv) A retailer whose shop measures one thousand square feet in area or more.
13.	Foreign Exchange Dealers / Exchange Companies.	Respective headings

CHAPTER-25

FINAL TAX REGIME AFID MINIMUM TAX LIABILITY

Final Tax Regime (FTR) is a procedure through which the amount of 'tax withheld' is treated as a full and final discharge of tax liability of a taxpayer in respect of transaction on which the tax was deducted or collected at source. The amount on which tax has been so deducted or collected is presumed as income of the taxpayer.

The idea of treating the receipt or even under some cases the costs as income was promulgated in 1991. Through implementation of FTR the Government, indirectly, admitted its failure in collection of taxes under the normal tax regime.

Another idea introduced by the Finance Act, 1991 was the imposition of a minimum tax liability on certain taxpayers. This tax, termed as the "Turnover Tax", is based on the total turnover of the taxpayer and is payable whether a taxpayer has earned income or has sustained a loss. These concepts continued even after promulgation of the new Income Tax Ordinance in 2001.

This chapter highlights some of the provisions relating to the Final Tax Regime and the Minimum Tax Liability of certain taxpayers. Under most of the cases the reader is suggested to refer to some other parts of the book. This is an attempt to avoid repetition of the material.

Certain incomes falling under FTR / STR are discussed in other chapters of the book. The table below contains the summary of the incomes and the chapter wherein those are discussed:

Sections	Incomes	Chapters
5	Dividend	Scope of Tax
6	Royalty and Fees received by non-residents	Taxation of persons
7 & 143	Shipping business of non-residents	Taxation of persons
7 & 144	Air transport business of non-residents	Taxation of persons
7A	Shipping business of residents	Taxation of persons
148	Imports	Payment of tax
151	Profit on debt	Payment of tax
152	Payments to non-residents	Payment of tax
153	Supplies, services & contracts	Payment of tax
154	Exports	Payment of tax
154A	Export of services	Payment of tax
156	Prizes and winnings	Payment of tax
156A	Petrol pump operators	Payment of tax
233	Brokerage and commission	Payment of tax

SUNDRY PROVISIONS APPLICABLE TO FTR / STR [8 & 169(2) & (3)]

The law has laid down certain special provisions regarding incomes and persons taxable under Final Tax Regime (FTR). These provisions are summarized below:

1. Where an income is taxable under FTR it shall not be chargeable to tax under any head of income while computing taxable income of the person.
2. The person shall not be allowed any deduction for any expenditure incurred in deriving such income.
3. The income shall not be reduced by any deductible allowance available under the law.
4. The income shall not be reduced by the set off of any loss sustained by the person under any head of income.
5. The tax determined under FTR shall not be reduced by any tax credits otherwise allowed under the Income Tax Ordinance.
6. The tax deducted or collected under this system shall not be refunded. However, where such tax exceeds the amount of tax chargeable under the law, then refund of the excess amount may be claimed.
7. Where all the income derived by a person in a tax year is subject to final taxation, an assessment shall be treated to have been made u/s 120.

MINIMUM TAX ON INCOME OF CERTAIN PERSONS [113]**Historical Background of Turnover Tax**

The idea of taxation on the basis of turnover was introduced in the Income Tax Ordinance, 1979, for the first time, in 1991. Under this procedure the tax, commonly known as 'Turnover Tax' or 'Minimum Tax', is levied on the turnover of certain persons deriving income from business. The idea of taxing the turnover as minimum tax liability has also been adopted, with slight modifications, in the Income Tax Ordinance, 2001. The Finance Act, 2006 abolished the turnover tax. But the same was once again levied through the Finance Act, 2009.

Provisions of Turnover Tax

The provisions relating to the Turnover Tax are the following: 1.

It is applicable to:

- i) A resident company;
 - ii) Permanent establishment of a non-resident company;
 - iii) An individual having turnover of hundred (100) million rupees or more; and
 - iv) An AOP having turnover of hundred (100) million rupees or above.
2. Turnover Tax (Minimum Tax) is levied at the following rates applied to the person's turnover for the tax year:

S. #	Persons	Tax Rate
1.	i) Sui Southern Gas Company Limited, Sui Northern Gas Pipelines Limited (for the cases where annual turnover exceeds rupees one billion); ii) Pakistan International Airlines Corporation; and iii) Poultry industry including poultry breeding, broiler production, egg production and poultry feed production.	0.75%

2	i) Oilrefinerres; ii) Motorcycle dealers registered under STA; ii Oil marketing companies.	0.5%
D J	i) Distributors of pharmaceutical products, 'fast moving consumer goods' and cigarettes; ri) Petroleum agents and distributors registered under STA; iii Rice mills and dealers; iv) Tier-1 retailers of fast moving consumer goods, who are integrated with FBR or its computerized system for real time reporting of sales and receipts; v) Person's turnover from supplies through e-commerce including from running an 'online market place;; vi) Persons engaged in the sale and purchase of used vehicles; and vii) Flour mills.	0.25%
4	In all other cases (general rate).	1.25 %
5	Distributors, dealers, sub-dealers, wholesalers and retailers of fast moving consumer goods, fertilizer, locally manufactured mobile phones, sugar, electronics excluding imported mobile phones, cement, steel and edible oil appearing on the ATL issued under STA and ITO. [Clause (2aD), Part-II of 2 nd Sch.] This reduced rate shall be available to only those Tier-1 retailers who are integrated and configured with FBR or its computerized system for real time reporting of sales or receipts.	"0.25o/o
6	Company operating Trading House, which fulfills the conditions laid down in clause (57) of Part-IV of 2 nd Sch.): For tax years upto 2021 For tax year 2022 and thereafter	0.5%1o/o

Online Marketplace t2(388)l

It means an information technology platform run by e-commerce entity over an electronic network that acts as a facilitator in transactions that occur between a buyer and a seller:

A person running online marketplace shall be subject to a withholding tax on brokerage and commission u/s 233 of ITO at a lower rate of 5%. [Clause (28C), pt. II, 2nd Schedule]

'Fast Moving Consumer Goods' means the consumer goods which are supplied in retail marketing as per daily demand of a consumer. It does not include durable goods. t2(22A)l 'Consumer Goods' means goods that are consumed by the end consumer rather than used in the production of another good. [2(13A8)]

3. Where any of the above-referred persons has no tax liability or tax liability under the normal tax procedure is less than the tax as per above table, then the person shall be required to pay this tax. In other words the tax liability of a person for any tax year shall be the higher of

the tax determined under NTR or tax computed by applying the above rates to the person's turnover for the tax year.

4. The reasons for no tax liability or less tax liability may be all or any of the following:
 - i) Sustaining of a loss;
 - ii) Setting off of a loss of an earlier year;
 - iii) Exemption from tax;
 - iv) Application of credits or rebates; or
 - v) Claiming of allowances or deductions (including depreciation and amortization) allowed under Income Tax Ordinance or any other law.

Notes:

1. "Tax payable or paid" does not include:
 - i) Tax already paid or payable in respect of deemed income which is assessed under final tax regime (FTR); and
 - ii) Tax payable or paid as super tax u/s 48 or 4C.
2. The definition of 'turnover' covers receipts from all business activities including but not limited to receipts from sale of immovable property where such receipt is taxable under the head Income from Business.

Turnover [2(7CA) & 113(3)]

For the purpose of charging minimum tax on the income of a specified person, 'turnover' means:

1. The gross sales or gross receipts excluding the following:
 - i) Sales tax and Federal excise duty derived from the sale of goods;
 - ii) Any trade discount shown on invoices or billing; and
 - iii) Any amount taken as deemed income and assessed as final discharge of tax liability for which tax is already paid or payable.
2. The gross fees for the rendering of services for giving benefits including commissions.
3. The gross receipts from the execution of contracts.
4. Where the company is a member of an association of persons (AOP), the company's share of the following amounts received by the AOP:
 - i) The gross receipts;
 - ii) The gross fees for rendering services and the commissions; and
 - iii) The gross receipts from the execution of contracts.

Note: The amounts, receipts, fees or commissions covered by final discharge of tax liability for which tax is separately paid or payable shall be excluded while computing turnover for the purpose of charging minimum tax.

Example: 25.1

Qasba Limited is a resident public company engaged in manufacturing of textile products. During the year it has a total turnover of Rs. 2,500,000. As per tax rules, it has a taxable income of Rs. 100,000. Compute the tax liability of the company.

Income tax on income of Rs. 100,000 @ 29%

Rs. 29,000