

SENATE OF PAKISTAN

REPORT NO.24 OF 2020



House of the Federation

**REPORT OF THE STANDING COMMITTEE ON FINANCE,
REVENUE AND ECONOMIC AFFAIRS**

ON

**THE TAX LAWS (SECOND AMENDMENT) ORDINANCE/BILL, 2020,
AS TRANSMITTED BY THE NATIONAL ASSEMBLY**

PRESENTED BY:

SENATOR FAROOQ HAMID NAEK

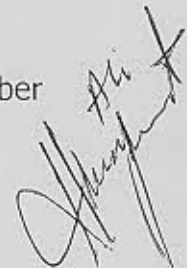
SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE, AND ECONOMIC AFFAIRS ON THE TAX LAWS (SECOND AMENDMENT) BILL, 2020

I, Senator Farooq Hamid Naek, Chairman, Standing Committee on Finance, Revenue and Economic Affairs, have the honour to present, on behalf of the Committee, this report on Ordinance/Bill further to amend certain tax laws, [The Tax Laws (Second Amendment) Ordinance 2019] transmitted to the House on 4th February, 2020, under proviso to Article 73 of the Constitution for making recommendations, if any, thereon to the National Assembly and referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee is given as under: -

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Syed Shibili Faraz	Member
(3)	Senator Ayesha Raza Farooq	Member
(4)	Senator Mushahid Ullah Khan	Member
(5)	Senator Musadik Masood Malik	Member
(6)	Senator Dilawar Khan	Member
(7)	Senator Muhammad Akram	Member
(8)	Senator Muhammad Talha Mahmood	Member
(9)	Senator Imam-ud-Din Shouqeen	Member
(10)	Senator Mohsin Aziz	Member
(11)	Senator Mian Muhammad Ateeq Shaikh	Member
(12)	Senator Anwar ul Haq Kakar	Member
(13)	Senator Sherry Rehman	Member
(14)	Advisor the Prime Minister for Finance and Revenue	Ex-Officio Member



3. The Committee considered the said Ordinance/Bill in its meeting held on 12th February, 2020, at Parliament House, Islamabad. The meeting of the Committee was attended by the following Senators:-

(1)	Senator Farooq Hamid Naek	Chairman
(2)	Senator Syed Shibili Faraz	Member
(3)	Senator Ayesha Raza Farooq	Member
(4)	Senator Mian Muhammad Ateeq Shaikh	Member
(5)	Senator Imam-ud-Din Shouqeen	Member
(6)	Senator Muhammad Akram	Member
(7)	Senator Sherry Rehman	Member

4. The Committee expressed its displeasure to the absence of Advisor to the Prime Minister on Finance and Revenue Affairs as well as Secretary Finance and observed non-serious attitude of the concerned department.

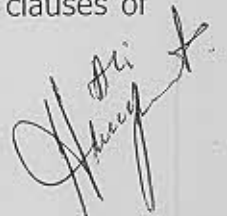
5. The Chairman Committee briefed the participants of the meetings regarding the provisions of Article 70 of the Constitution of Pakistan which deals with ordinary legislation with respect to any matter in the Federal Legislative List as well as Article 73 of the Constitution of Pakistan which deals with procedure with respect to Money Bills and lays down conditions as to when a Bill shall be deemed to be a Money Bill and when a Bill shall not be deemed to be a Money Bill as provided in Article 73 (2) and Article 73 (3) respectively of the Constitution of Pakistan 1973. He also cited a judgment reported in **PLD 2017 SC 28** (Workers Welfare Funds versus East Pak Chrome Tannery Pvt. Ltd). In para 22 on page 50 – 51 of this judgment it has been held that:

"merely inserting amendments, albeit relating to finance but which had no nexus to tax in a Finance Act did not mean that such Act was a Money Bill as defined in Art.73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Art. 70 of the Constitution by resorting to Art.73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution."

6. The Members FBR and Customs apprised the Committee that these amendments were necessitated by the FATF which has stated that the current penalties are insufficient and penalties and fines are necessary to be increased. According to them penalties and fines along with the procedure and related matters fall within the ambit of imposition of tax and regulation of tax and as such The Tax Laws (Second Amendment Ordinance) 2019 may be recommended as Money Bill as defined in Article 73 (2) (a) of the Constitution of Pakistan.

7. The Legislative Advisor of Ministry of Law and Justice was of the view that the imposition of penalties and fine do not fall within the ambit and purview of the Money Bill as defined in Article 73 (2) (a) but fall within the ambit of Article 73 (3) (a) of the Constitution of Pakistan 1973.

8. After going through the clauses of The Tax Laws (Second Amendment) Ordinance 2019 the Committee was of the view that more than 90% of clauses of



the said Bill comprised of imposition of penalties or fines and procedure and other matters which do not pertain to the imposition, abolition, deletion, alteration and regulation of any tax. The question arises as to whether Doctrine of Severability can be applied in the instant case to preserve the operation of the clauses which deals with the imposition or reduction of tax. Taking guidance from the case reported in **PLD 2012 SC 923** (Baz Muhammad Kakkar V Federation of Pakistan) the Committee was of the view that the said Doctrine cannot be applied to sever the unconstitutional portion of a partially unconstitutional Bill (in this case major portion of the Bill under consideration is unconstitutional) in order to preserve the operation of the valid remainder as it is so closely mixed up with the invalid portion that it cannot be separated without leaving an incomplete or more a less mixed remainder.

9. After discussion and deliberation and hearing all stakeholders, through voting with three Members in favour namely Messers Senators Sherry Rehman, Imam-ud-Din Shouqeen and Muhammad Akram and two against namely Messers Senators Shibli Faraz and Mian Muhammad Ateeq Shaikh decided that the Bill does not deal with the imposition, abolition, remission, alteration or regulation of any tax, therefore, does not fall within the purview of Article 73 (2) of the Constitution of Pakistan. **The Committee therefore recommends by majority to the National Assembly that the Tax Laws (Second Amendment) Ordinance 2019, does not fall within the purview of Article 73 (2) of the Constitution, therefore,**



the said Bill may be withdrawn by Government and the same be brought under Article 70 of the Constitution of Pakistan 1973.

10. The Ordinance/Bill as transmitted to the Senate is annexed



(HYDER ALI)

JS/Secretary (Committee)



(SENATOR FAROOQ HAMID NAEK)

Chairman (Committee)

Islamabad, the
14th February, 2020

[Published in the Gazette of Pakistan, Extraordinary, Part-I,
dated the 28th December, 2019]

ORDINANCE NO.XXVI OF 2019

AN

ORDINANCE

further to amend certain tax laws

WHEREAS it is expedient further to amend certain tax laws for the purposes hereinafter appearing;

AND WHEREAS, the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Tax Laws (Second Amendment) Ordinance, 2019.

(2) It shall come into force at once.

2. **Amendments in the Customs Act, 1969 (IV of 1969).**—In the Customs Act, 1969 (IV of 1969), the following further amendments shall be made, namely:—

(1) after section 3CC, the following new section shall be inserted, namely:—

“3CCA. **Directorate General of Law and Prosecution.**— The Directorate General of Law and Prosecution shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors, Special Public Prosecutors and such other officers as Board may, by notification in the official Gazette, appoint.”;

(2) in section 6, in sub-section (1), after the word “Banks”, the expression “in accordance with the legal framework notified by the Board” shall be inserted;

(3) in section 7, after full stop at the end, the expression “The provision of assistance so requested shall be binding.”, shall be added;

(4) in section 139, the existing provision thereof shall be re-numbered as sub-section (1) thereof and after the proviso to the re-numbered sub-section (1), the following new sub-section shall be added, namely:—

“(2) In case of recovery or seizure subsequent to false declaration or failure to declare under sub-section (1) of the items notified under clause(s) of section 2, offence shall be treated at par with clause(s) of section 2.”;

(5) in section 156, in sub-section (1), in the Table, in column zero,—

(a) in serial 8, after sub-serial (ii) and entries relating thereto in columns (1), (2) and (3), the following new serials shall be inserted, namely:—

“(iii)	if the smuggled or prohibited goods comprise currency of all types.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to;	General
	(a) if the amount of the currency over and above the permissible limit is upto US dollars 10,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the excess amount of the currency;	
	(b) if the amount of the currency over and above the permissible limit is US dollars 10,001/- to 20,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times the value of the excess amount of the currency;	
	(c) if the amount of the currency over and above the permissible limit is US dollars 20,001/- to 50,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding two years;	
	(d) if the amount of the currency over and above the permissible limit is US dollars 50,001/- to 100,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding seven years;	
	(e) if the amount of the currency over and above the permissible limit is US dollars 100,001/- to 200,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to	

		imprisonment for a term not exceeding ten years: Provided further that the sentence of the imprisonment shall not be less than three years.	
	(f) if the amount of the currency over and above the permissible limit exceeds US dollars 200,000/- or equivalent in value (currency of other denomination) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years: Provided further that the sentence of the imprisonment shall not be less than five years.	
(iv)	If the smuggled/prohibited goods comprise of gold, silver, platinum or precious stones in any form;	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to;	General
	(a) if the quantity of such goods is up to 15 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding the value of the goods;	
	(b) if the quantity of such goods is from 16-30 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times the value of the currency;	
	(c) if the quantity of such goods is from 31-50 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding one year;	
	(d) if the quantity of such goods is from 51-100 tola gold	such goods shall be liable to confiscation and any person	

	or equivalent in value (silver or platinum) etc.	concerned in the offence shall be liable to a penalty not exceeding three times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding three years;	
	(e) if the quantity of such goods is from 101-200 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding four times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding five years;	
	(f) if the quantity of such goods is from 201-500 tola gold or equivalent in value (silver or platinum) etc.	such currency shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding five times the value of the currency; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding ten years: Provided further that the sentence of the imprisonment shall not be less than three years.	
	(g) if the quantity of such goods exceeds 500 tola gold or equivalent in value (silver or platinum) etc.	such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years: Provided further that the sentence of the imprisonment shall not be less than five years.”;	

