

Federal Excise Act, 2005 and Rules

Significant amendments

Due date

Section 2(8a)

The definition of term 'due date' provides powers to the Federal Government to notify any due date for filing of Federal excise return, beyond the generally prescribed due date. The Bill seeks to empower the Board, instead of Federal Government.

KIBOR

Sections 2(15a) & 8

The Finance Bill seeks to insert the definition of "KIBOR" as Karachi Inter Bank Offered Rates as applicable on the first day of each quarter of the financial year.

The definition of KIBOR has been introduced as the levy of default surcharge and the amount to be paid on delayed refunds are proposed to be linked to KIBOR. Therefore, the rate of default surcharge under the provisions of Section 8 of FE Act has been substituted by KIBOR plus three percent.

Duties specified in the First Schedule to be levied

Section 3(5)(d)

The Bill seeks to insert a proviso to Section 3(5)(d) to empower the Board to specify by notification in the official gazette, the goods or services in respect of which the liability to pay tax shall be of any other person as specified in the

notification, subject to specified conditions and restrictions.

Assessment of duty

Section 4A

The Bill proposes to insert a new provision for assessment of duty, where a registered person fails to file the return within due date empowering the excise officer to determine minimum liability towards FED in the same manner as prescribed under sales tax laws. However, in case registered persons settles the FED liability alongwith default surcharge and penalty, the notice for payment of minimum amount of duty shall abate. The proposed insertion is quite identical with the provisions of Section 11 of the Sales Tax Act, 1990.

Records

Section 17(1)

At present the FE Act requires registered persons to retain their records for a period of five years at the business premises.

The Bill now seeks to increase the time limit for retention of prescribed excise records beyond five years, that is, until such time that pending litigation is disposed of by appellate/litigation forums.

Invoices

Section 18(1)(b)

As a step towards further documentation of the economy, the Bill proposes to amend Section 18,

requiring registered persons to disclose on their sales tax invoices NTN or CNIC numbers of its unregistered customers.

Offences, penalties, fines and allied matters

Section 19(9)

The penalty applicable under subsection (9) is proposed to be attracted in case of non-printing of health warning and name of the manufacturer of the cigarettes on retail packing alongwith retail price. This proposal may provide legal backing to the issue, although the same is widely in practice.

Power of adjudication

Section 31(1)(ii),(iii),(iv) & (3)

The Bill proposes to extend adjudicating authority to Senior Auditors in addition to Superintendents and Principal Appraisers.

It is also proposed that the extension time to finalize adjudication beyond 120 days be curtailed from 90 days to 60 days.

However, by virtue of the proposed proviso to Section 31(3), the period of adjournments on the request of taxpayer or court proceedings, etc. shall be excluded from the allotted 120 days, extendable by another 60 days. This measure supports the revenue, so that any case may not be held barred by limitation where adjudication proceedings are

adjourned. Similar amendments are also proposed under the provisions of Customs and Sales Tax legislations.

Appeals to collector (Appeals)

Section 33(2)

The Bill seeks to amend the time limit of extension in deciding the appeal by the Collector (Appeals) curtailing it to 60 days, instead of 90 days. Further, proviso is proposed to be inserted to exclude the periods of adjournments due to request of the appellant, etc.

Similar amendments have also been proposed under Customs and Sales Tax laws to bring the provisions in harmony with each other, considering the fact that the Collector of Appeals singly conducts appeals on customs, excise and sales tax matters.

Appeals to the Appellate Tribunal and Reference to High Court

Sections 34(2) & (3) to (13)

The Bill seeks to simplify the captioned provision by referring the relevant provisions of the Customs Act, 1969 [i.e. Sections 194A, 194B and 194C] and allied rules to adopt the procedures applicable for filing of appeal and reference before the High Courts. Therefore, sub-sections (3) to (13) stands omitted by means of proposed amendment.

Power of Board or Collector to pass certain orders

Section 35(3)

The Bill seeks to amend Section 35(3) to enhance the period of reopening of cases from 2 to 3 years. However, as provided under Section 35(1) that the Board and the Collector of Customs are empowered to re-examine the decided cases as adjudicated by the subordinate officers only. The proposed enhancement of time period seems a harsh measure.

Alternative dispute resolution

Section 38(3),(3A),(4) & (5)

The ADR forum executes out-of-court settlement of the disputes between the taxpayer and field formations. The Bill seeks few changes in the relevant provisions of Section 38 in order to make ADR mechanism more productive and tax-payer friendly, as summarized below:

- The Committee will send its recommendations to the Board within 180 days of the date of constitution, instead of 60 days. Accordingly, the proviso under sub-section (3) relating to extension of time is proposed to be omitted.
- A new clause is inserted under Section 38(3A) empowering the Board to dissolve the Committee and constitute a

new Committee in case the recommendations are not sent within stipulated time.

- The Board may, on recommendations of the Committee, pass the appropriate order within 45 days of the receipt of recommendations thereof.

Delayed refund

Section 44A

Under sales tax law, the tax payer is entitled to receive compensation in case any due refund claim is not paid within prescribed time. However, no such provision was provided under the excise laws. By virtue of proposed amendment, the refund claimant having filed refund under Section 44 will be entitled for compensation on delayed refund, in addition to the amount of refund due. The rate of this compensation will be based on the rate of KIBOR per annum.

First Schedule to the Federal Excise Act, 2005

Table I - Excisable goods

Enhancement of rate of FED on cigarettes and allied products

Sr.No.8, 9, 10, 11 & 12

The rates of FED on cigarettes and allied products are proposed to be enhanced as follows:

Product	Rate of FED
8. Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substance	Sixty four percent of retail price
9. Locally produced cigarettes if their retail price exceeds nineteen rupees and fifty paisa per ten cigarettes	Sixty four percent of the retail price
10. Locally produced cigarettes if their retail price exceeds ten rupees per ten cigarettes but does not exceed nineteen rupee and fifty paisa per ten cigarettes	Four rupees and seventy-five paisa per ten cigarettes plus seventy percent per incremental rupee or part thereof
11. Locally produced cigarettes if their retail price does not exceed ten rupees per ten cigarettes	Four rupees and seventy-five paisa per ten cigarettes
12. Cigarettes manufactured by a manufacturer who remains engaged on and after 10 th June 1994, either directly or any other arrangement, if the manufacture of any brand of cigarette in non-tariff areas.	Sixty four percent of retail price

The Bill also proposes to place restriction that for the purpose of levy, collection and payment of duty at the rates specified, no cigarette manufacturer shall reduce price from the level adopted on the

day of the announcement of Budget 2009-10.

Cement – Sr.No.13

Rate of FED on cement is reduced from Rs.900 per metric ton to Rs.700 per metric ton to encourage construction activities in the country.

Table II - Excisable Services

Scope of advertising services enlarged

Sr.No.2A

The Finance Bill seeks to impose levy of FED at the rate of 16% of the charges on advertisements in newspapers and periodicals, and on hoarding boards, pole signs, sign boards and shop board, which shall be payable in VAT mode as provided under SRO.478(I)/2009, dated 13 June 2009.

Reduction in rate of FED applicable on telecommunication services

Sr. No.6 & 6A

Rate of FED on telecom services is reduced from 21% to 19% in order to reduce the cost of the service. However, a new insertion is proposed under Sr.No.6A to levy FED separately on “Short Message Service (SMS)” at the rate of Paisas twenty per SMS in addition to rate specified at Sr.No.6 i.e. 19% now.

A revised form applicable for telecommunication companies has also been introduced vide SRO.475(I)/2009, dated 13 June 2009.

Enhancement of rate of FED on specified insurance services under VAT mode

Sr. No.7

Standard rate of 16% of the gross amount of premium is proposed to be applicable for excisable insurance services in order to widen the tax net. However, the collection and payment of such FED will be governed under VAT mode, which means that input tax credit would now be adjustable against the output FED.

The exemptions available on health insurance, crop insurance and marine insurance for export, as provided under Third Schedule to FE Act, have now been incorporated under Rule 40(1) of FE Rules, in addition to life insurance vide SRO.475(I)/2009, dated 13 June 2009.

Enhancement of scope and rate of FED on banking services under VAT mode

Sr. No.8

The word ‘non-fund’ is proposed to be omitted from the above Entry of

First Schedule, which implies that all services provided or rendered by banking companies or non-banking finance companies will be subjected to levy of FED at 16% of the charges. Thus, the rate is also being enhanced from 10% to 16%. However, the collection and payment of such FED will be governed under VAT mode, which means that input tax credit would now be adjustable against the output FED as provided under SRO.478(I)/2009, dated 13 June 2009.

Consequential amendments under Rule 40A of Federal Excise Rules, 2005 have also been made after enlarging the scope of banking services. A new format of reconciliation statement, as is required to be filed by banks / financial institutions on quarterly basis, also apparently covers leasing, lending, and other banking services. However, the Rule 40A(4) has been amended to exclude mark-up or interest from excise duty leviable on amount charged for the services provided to the customers.

Services provided or rendered by stockbrokers

Sr. No.13

The services of stockbrokers are also brought to the tax net by levying FED at the rate of 16% of the charges, which shall be payable in VAT mode as provided under SRO.478(I)/2009, dated 13 June 2009. Special procedure rules

have been inserted for collection and payment of FED by Port Operators and Terminal Operators vide SRO. 475 (1)/2009 dated 13 June 2009.

Services provided or rendered by port and terminal operators in relation to imports excluding stevedoring services

Sr. No.14

The services of port and terminal operators have also been subjected to levy of ED at the rate of 16% of the charges, which shall also be collected and paid in VAT mode, as provided under SRO.478(I)/2009, dated 13 June 2009.

Therefore, the terminal operators will be excluded from the purview of the Provincial Sales Tax Ordinances and may not be considered to fall under the caption of 'stevedore'.

Through SRO.475(I)/2009, THE definitions of 'Port Operator' and 'Terminal Operator' are inserted consequent to introduction of FED on Port and Terminal Operators. Further, special procedure rules have been inserted for collection and payment of FED by Port Operators and Terminal Operators.

Exemptions from levy of FED

S.R.O.474(I)/2009

Following exemptions on excisable goods and services, owing to proposed amendments under the First Schedule to FE Act, have been allowed:

- Motor cars and other motor vehicles principally designed for the transport of persons including station wagons and racing cars of cylinder capacity exceeding 850 cc.
- Viscose staple fibre
- Services provided or rendered by banking companies and non-banking financial companies in respect of Hajj and Umrah, cheque book, insurance, Musharika and Modaraba financing and utility bill collection.