

Tax Review/Taxation

Daily Alert Services

Huzaima & Ikram
November 06, 2013

This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, *Taxation* in printed form, is sent through post and digital version of *Tax Review International* is made available for download at www.huzaimaikram.com.

For subscription, please visit our [website](#) or contact offices mentioned below.

This service is available only for paid subscribers. If you are a subscriber of *Law and Practice of Income Tax (LPIT)*, *Law and Practice of Sales Tax (LPST)*, *Taxation or Tax Review International* but not receiving this service, please send your email address at sales@huzaimaikram.com quoting subscription number.

Disclaimer:

The material contained in this publication is not intended to be advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without seeking appropriate professional advice. The publisher, the authors and editors, expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance upon the contents of this publication.

This issue contains:

- **ARTICLE**

Forgotten promise

- **TAX NEWS**

Dutch Industry Slams Water and Waste Tax Plans

South African Employment Tax Incentive Welcomed

Liechtenstein Offers Exemption From CO2 Tax Rise

Rs9bn fake refunds scam unearthed

FBR issues Rs 2m to upgrade WEBOC system

LTBA seeks to remove complexities in PRAL system

FBR plans to reconstitute Pral BoM, BoD

Kind regards

Mrs. Huzaima Bukhari
Editor

Lahore

Suite No. 14, Second Floor,
Sadiq Plaza, Regal Chowk, Mall Road,
Lahore 54000 Pakistan
Ph. (+9242) 36280015 & 36365582

Karachi

Ms. Sadaf Bukhari
Cell: 0301-8458701

Forgotten promise

by

Huzaima Bukhari & Dr. Ikramul Haq

“The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work” – Article 3, 1973 *Constitution of Islamic Republic of Pakistan*

For the last three decades, the State has failed to fulfill a promise that is lying dormant—now almost dead wood—in the supreme law of the land. Tragically, all the economic policies, adopted by the military and civilian rules alike, since the insertion of this principle in the 1973 Constitution, have been diametrically opposite—promoting, protecting and cementing the interests of the exploitative classes. This Land of the Pure has, undoubtedly, nurtured an extremely exploitative socio-economic system, which has gained strength over the passage of time. Adding insult to injury, the apex court in 1990 held that land reforms were “un-Islamic”. Various kinds of repressions, coupled with cruelest means of economic exploitation by the ruling elites, are in vogue in Pakistan, denying citizens their right to a decent life.

The motto ‘**from each according to his ability, to each according to his needs,**’ though has its roots in the New Testament [4:32-35: **The Believers Share Their Possessions**], was popularised by Karl Marx in his 1875 *Critique of the Gotha Programme*. The phrase enunciates the principles that, under an ideal system, every person should contribute to society to the best of his or her ability and consume from society in proportion to his or her needs. Fusing this Marxist ideology into ‘Islamic Socialism,’ Zulfikar Ali Bhutto in the early part of his politics—later he became an instrument in the hands of ruling classes—promised in the Constitution, “from each according to his ability to each according to his work.” In fact, he followed the USSR (now erstwhile) where the ruling communist party claimed that at a lower stage of communism (socialism) in line with Marx’s arguments, it should be “**From each according to his ability, to each according to his work (labour/investment).**”

Obviously, Karl Marx had specific conditions in mind for such a creed to work—a society where technology and social organisation had substantially eliminated the need for physical labour in the production of things, where “labour has become not only a means of life but life’s prime want.” Marx explained his belief that, in such a society, each person would be motivated to work for the good of society despite the absence of a social mechanism *compelling* them to work, because work would have become a pleasurable and creative activity. Marx intended the initial part of his slogan, “from each according to his ability” to suggest not merely that each person should work as hard as they can, but that each person should best develop his particular talents.

Many students ask us: “Is the Constitutional command of gradual elimination of all forms of exploitation legally enforceable”? Many naively believe that a petition should be filed in Supreme Court asking the government to act upon it. Those who are realists remind them that the apex Court has even failed to get its decisions on price hikes implemented and that the independence of judiciary is just a myth. Pakistan is ruled by a trio—militro-judicial-civil complex, businessmen-turned-politicians and landed aristocracy.

The privileged classes protect and perpetuate exploitation of the poor. Judiciary in Pakistan has been playing in the hands of mighty classes. In the case of *Qazalbash Waqf v. Chief Land Commissioner, Punjab and others* (PLD 1990 SC 99), the Shariat Appellate Bench of Supreme Court confirmed the decision of Shariat Court, established by Ziaul Haq, quashing the progressive land reforms laws as repugnant to the Quran and Sunnah. Presently, a nine-member bench of the apex court is hearing a review petition, filed by Workers’ Party, National Party, Kissan Committee and others, against the said decision. As expected, the regressive ruling party (PML-N) through Advocate General of Punjab has opposed the review petition. From the side of landowners, head of their organisation Shah Mahmood Qureshi, leader of so-called party of change (sic) PTI, has hired an expensive lawyer, who claims to be amongst the framers of 1973 Constitution!

Progressive forces, many critics say, have a wishful thinking that in the review petition to be heard on November 12, 2013, the Supreme Court may undo its earlier judgement in *Qazalbash Waqf* case. If it happens, it would be a great victory for progressive forces and landless tillers—the outgoing Chief Justice, Iftikhar Muhammad Chaudhry, would then become a true hero of the downtrodden. But Marx observes that all State organs protect the interests of the ruling classes and judiciary is no exception. The Anglo-Saxon law that our judiciary practices and protects guarantees private property and exploitation of the have-nots. Judiciary is not a revolutionary party; it is nothing but a product of the existing socio-economic system. Hence, it would be unfair to demand from this organ of the State, any revolutionary decision. They played the most undesirable role of undoing progressive lands reforms confirming that political struggle by a revolutionary mass-based party alone can implement Article 3 of the Constitution.

Pakistan needs a grand alliance of progressive parties and groups that wins the mandate of masses to change the present economic system, which is highly unjust and oppressive. It protects establishment and exploitative classes that have monopoly over economic resources. The present parties are not even sincere with democracy as they lack the will to tax privileged classes. The poor are paying exorbitant indirect taxes even on essential commodities of everyday use, but the mighty sections of society—big absentee landowners, industrialists, generals and

bureaucrats—are paying no wealth tax/income tax on their colossal assets/incomes.

The gigantic and useless government apparatus—doing nothing for public welfare—is also busy in looting the wealth of the nation and wasting whatever taxes are collected. The army of ministers, state ministers, advisers, consultants, high-ranking government servants (sic) is not willing to give up unprecedented perquisites and privileges. They are not ready to live like common men by surrendering the luxury they are enjoying at the cost of taxpayers' money.

The mighty sections of society defy Article 3 of the Constitution with impunity. An unholy anti-people alliance of trio of indomitable civil-military bureaucrats, corrupt and inefficient politicians and greedy businessmen, controlling and enjoying at least 90% the State resources is contributing less than 2% in national revenue collection. It will be living in Fool's Paradise to expect them to implement Article 3 of Constitution. Making Pakistan a State in consonance with the principle embodied in Article 3 requires political struggle under a mass-based front having support of progressive forces, media and civil society. Such campaign alone can guarantee equitable distribution of wealth and resources as envisaged in the Constitution.

Netherlands

Dutch Industry Slams Water and Waste Tax Plans

The Confederation of Netherlands Industry and Employers (VNO-NCW) has warned against Government plans to increase tap water tax and to reintroduce waste tax in the Netherlands, within the framework of the 2014 Tax Plan.

In a letter to the Dutch Second Chamber, the organization insisted that the water and waste tax provisions contained in the legislation are not only expensive but will also be ineffective. The Government's 2014 Tax Plan provides for a rise in the tax rate imposed on tap water usage and for the abolition of the ceiling preventing taxation on tap water usage in excess of 300m³. Furthermore, the bill reintroduces a tax on the dumping of waste.

According to VNO-NCW, the new tap water tax proposed by Financial State Secretary Frans Weekers will have "unforeseen and disproportionate negative consequences," above all for the chemical and food industry in the Netherlands. A company that now pays just EUR50 (USD68) a year in tap water tax will soon have to pay millions, the group argued.

Indeed, the decision to remove the current ceiling preventing taxation on the usage of tap water above 300m³ will mean that some individual companies in the Netherlands will be required to pay sums of between EUR5m and EUR10m, VNO-NCW explained. The organization made clear that the measures will also adversely impact the country's tourism and health care sectors, as well as affecting office-based companies. Businesses will simply not be able to take these "enormous contributions" into account in their prices, especially not multinationals, the body pointed out.

Finally, VNO-NCW emphasized that plans to reintroduce a waste tax in October 2014 will not lead to the desired environmental effects. Instead, the levy will merely mean that waste is transported abroad, result in less recycling, and will cause companies to postpone or cancel plans to carry out soil remediation and asbestos processing, the body stated, urging Financial State Secretary Weekers to discuss the problem with the waste sector in order to find more effective ways in which to protect the environment.

The Second Chamber began its examination of the 2014 Tax Plan on November 4. – *Courtesy tax-news.com*

South Africa**South African Employment Tax Incentive Welcomed**

The South African Government has welcomed the approval in parliament of the bill to introduce the Employment Tax Incentive (ETI), which aims to reverse the high levels of youth unemployment by reducing the cost to employers of hiring employees between the ages of 18 and 29.

The ETI will encourage employers to give young people their first job experience, and works through a cost-sharing mechanism with the Government within the pay-as-you-earn system, while not having an impact on the wage the employee receives.

It will operate by decreasing the amount of tax that is owed by an employer through the pay-as-you-earn system. The amount of tax that is owed by an employee will still be recorded as being paid (there will be no shortfall on assessment), while the employer may retain the cash value of the incentive.

Qualifying employees must be between the ages of 18 and 29, possess a South African ID and must receive a salary that is between the minimum wage for that specific sector and ZAR6,000 (USD587) per month. The incentive will be available for the first two years of employment, and its value is prescribed by a formula, which has three components for different wage levels.

One of the responses to the draft bill was that it would result in the displacement of older and unsubsidized workers, with a hiring bias toward younger people where these employees could easily be replaced after two years of employment. However, Acting Government Communication and Information System CEO, Phumla Williams, said: "Government is confident that thorough consultation processes were undertaken, and concerns that were raised have been responded to. The bill makes clear provisions to correct potential abuse by employers and has no impact on current labor relations or legislation, and will by no means weaken the rights of the workers."

It has also been emphasized that the National Treasury and the South African Revenue Service will monitor the ETI closely in order to evaluate and explore what works and which design can make the best use of taxpayers' money. These findings will be shared with interested stakeholders and the public to illustrate the extent of the impact of the proposal.

The ETI will commence on January 1, 2014, and will be available until December 31, 2016. However, to avoid the possibility of employers holding off hiring decisions until January 1, 2014, the incentive will apply to all qualifying employees who were hired after October 1, 2013. – *Courtesy tax-news.com*

Liechtenstein

Liechtenstein Offers Exemption From CO2 Tax Rise

Confirming that the Principality's carbon dioxide tax imposed on fossil fuels is set to rise in 2014, the Liechtenstein Government has reiterated that companies may request exemption from the levy, simply by pledging to increase their energy efficiency.

The Liechtenstein Government has urged energy-intensive companies as well as those businesses in the Principality eager to improve their energy efficiency, particularly in view of rising energy prices, to consider how they might introduce economically viable measures to do so. By demonstrating a commitment to increasing their energy efficiency, companies may benefit from exemption from the country's carbon dioxide tax, the Government emphasized.

Introduced in Liechtenstein in 2008, the carbon dioxide tax imposed on fossil fuels is set to rise from next year, from CHF36 (USD39) per ton of carbon dioxide emitted to CHF60. As a result, the tax on extra light heating oil will increase from 9.5 cents currently to 16 cents per liter, while the levy on natural gas will rise from 7 cents currently to 12 cents per cubic meter in 2014.

The tax is expected to generate around CHF260m annually from 2014 for the Government's building program, aimed at reducing carbon dioxide emissions by promoting building renovations, investment in renewable energies, waste heat recovery, and building utilities optimization. In addition, the levy will yield approximately CHF480m for the economy and for the population, notably via a reduction in health insurance premiums.

The rise in the levy in 2014 is provided for within the framework of Switzerland's revised Carbon Dioxide Act, which extends the levy imposed on fossil fuel until 2020 and raises it in step with interim targets. Given that Switzerland failed to meet its carbon dioxide emissions reduction target at the end of the first period (2008-2020), the rise was agreed. Specifically, the Carbon Dioxide Act aimed for a 15 percent reduction from heating and industrial

process fuels and for an 8 percent reduction from transport fuels, compared to 1990 levels.

Liechtenstein is required to transpose Swiss federal legislation on environmental levies into national law, in accordance with the bilateral treaty between the two countries.

The Liechtenstein Government intends to hold an information-sharing event on the costs of the carbon dioxide levy to 2020 and on the possibilities for companies to gain exemption from the tax on November 27. – *Courtesy tax-news.com*

Rs9bn fake refunds scam unearthed

Tax authorities have unearthed a scam of refund issuance of around Rs9 billion on fake invoices but the high-ups of the Federal Board of Revenue (FBR) are trying to hide it, sources said on Tuesday.

As per the details made available to The News, the officials of Regional Tax Office (RTO) – II have finalised the case after thorough scrutiny and identified Rs8.89 billion jointly defrauded by over 150 units by presenting fake and flying invoices during September 2009 to October 2012.

The sources said that the scrutiny and examination in the case was finalised early this year but neither a FIR was lodged nor the senior officers at the RTO-II were giving approval to initiate proceedings against the culprits involved in the scam.

The high-ups were deliberately covering up the issue due to alleged involvement of their senior colleagues, the sources said.

The refunds were issued by the central refund office of the FBR in Islamabad on the recommendations of the officials of deputy commissioner level with the consent of commissioner Inland Revenue Services, the sources said, adding that investigation had proved no supportive / necessary documents were attached with the claim yet the refunds were issued.

The three RTOs in Karachi have not lodged any FIR against any tax evader / fraudster since November 2009. However, some other sources said that two FIRs were lodged by RTO-II in November 2011.

Similarly, no team has been formed at the regional tax office level for investigation and prosecution, they said.

The sources said that invoking Section 37 & 38 of the Sales Tax Act, 1990 could be helpful for the tax department to determine the ground realities. Both the sections allowed call of record from accused persons, besides search of premises and arrest.

The sources said that of over 150 units hardly 15 to 20 units were blacklisted and posing threat of further loss to the national exchequer.

The identified case was prior to launching of Computerised Risk-based Evaluation of Sales Tax (CREST), which prevented refunds on fake claims. The case should be taken up on a priority basis

because the sales tax statement filed by the registered firms had shown supplies without the purchases, the sources said.

Describing the details of prime accused in the case, which lead to the entire chain of over 150 units, the sources said, the company obtained refunds of Rs386 million on illegal adjustment, unlawful input tax and fake declaration of import goods declaration.

The banking record of the company was also cross-verified and detected that a bank had confirmed that no such title of account ever exists.

Further investigations on the basis of chain invoices was carried out and it was found out that interlinked units, which were established in connivance of fraudster / rackets have been indulged in massive evasion of tax fraud by issuance of fake invoices on account of non-existence and without having lawful input tax.

The sources said that the racket, which was being identified on account of fake chain invoices have no such input verified or deposited in the government treasury. – *Courtesy International The News*

FBR issues Rs 2m to upgrade WEBOC system

Federal Board of Revenue (FBR) has issued Rs 2.0 million for the ungradation of Web Based One Customs (WEBOC) introduced by native experts.

ollector Custom, Model Custom Collectorate Touseef Ahmad while addressing a ceremony in Multan Chamber of Commerce and Industry (MCCI) on Tuesday assured the system would be made flawless within two weeks. He said earlier the system for clearance was required billion of rupees for maintenance, which were paid to international firms. However, he said WEBOC system was a special technique being introduced to meet the requirements of our customs.

He expressed concern industrialists and traders had given least importance to Multan Dry Port to get their imports and exports and preferred Karachi Dry Port over it.

He advised businessmen to submit applications for valuation of their goods before getting imported of their commodities. As soon as their goods would arrive, their assessment would be completed, he remarked. – *Courtesy Daily Times*

LTBA seeks to remove complexities in PRAL system

Lahore Tax Bar Association (LTBA) on Monday demanded of the Federal Finance Minister and Chairman Federal Board of Revenue to remove complexities in the PRAL system (Pakistan Revenue Automation Pvt Ltd) as it is creating multiple problems for tax payers.

The demand was raised at a meeting of Lahore Tax Bar Association held here on Monday. The meeting was presided over by the President LTBA Qari Habibur Rehman Zuberi and also attended by Secretary LTBA Ali Ahsan Rana, Zahid Pervaiz, Tufail Asghar, Khurram Shahbaz, Zulfiqar Ahmad and Anis Anjum among others.

The LTBA President said the government would not be able to meet revenue target for the year if the PRAL system was not made taxpayer friendly and the lacunae in it were not removed immediately. The House on the occasion adopted a resolution calling for immediate changes in the PRAL system that has put the tax payers in great troubles. The House also expressed its dismay over the non-functioning of the system in recent past.

The House also called for improvement in the Chief Revenue Office (CRO) Islamabad to enable it to help expansion in the tax net instead of creating undue hurdles. The House also demanded of the FBR to grant permission for submission of Wealth Statement as Short Document besides allowing submission of manual tax returns as there are a large number of businessmen who are unable to use online system. The LTBA President said the Association has already forwarded a number of complaints to the concerned authorities but to no avail. He said the Chairman FBR should take stock of the whole situation to ensure smooth filing of tax returns. – *Courtesy Business Recorder*

FBR plans to reconstitute Pral BoM, BoD

The Federal Board of Revenue is planning to reconstitute Pakistan Revenue Automaton Limited (Pral) Board of Management and Board of Directors to end absolute authority in the hands of a few employees and to monitor and evaluate performance of the organisation. Sources told on Tuesday that the Pral Board of Directors meeting has been scheduled, after the Board in Council meeting, during current month.

The agenda of the meeting included reconstitution of Pral Board of Management and Pral Board of Directors. As a result of absolute authority in the hands of a few employees of Pral, with no check and balance by the owner, ie, FBR, Pral's efficiency and effectiveness has seriously deteriorated which is not only observed by the FBR itself but has also been highlighted by high forums such as the Federal Tax Ombudsman (FTO) and Islamabad High Court (IHC).

Details of the issue revealed that the PRAL was incorporated as a private limited company with 100 percent share holding by the FBR. Initially, all administrative and financial powers were vested in the Board of Directors. The BoD in its meeting held on September 17, 1995 approved delegation of Powers to CEO to run routine matters of the company and powers to make capital expenditure were delegated to a committee comprising two directors of Pral's BoD and CEO. However, later on majority of the said powers were delegated by the Board of Directors to the Board of Management through a Resolution titled "Pakistan Automation (Pvt) Ltd. Delegation of Administrative and Financial Powers - 1998".

Under the originally composed Pral's BoD structure, Pral Chief Executive Officer was the Chairman of the Pral BoD; General Manager, Member; Company Secretary, Member; Manager Finance, Member/Secretary; Senior Project Managers (concerned), Member and Head of Services and Admn Department would be Member of the Pral BoD. However, the said composition was changed and Pral's BoM is currently composed as: Chief Executive Officer, Chairman; General Manager (IT Operations), Member; General Manager (Development), Member; General Manager (Finance), Member and SA to CEO, Secretary.

Due to absolute authority with a few employees of Pral, having no check and balance by the owner, ie, FBR, Pral's efficiency and effectiveness has seriously deteriorated which is not only observed by the FBR itself but has also been adversely highlighted by judicial fora.

Recently, IT Wing has been created to supervise and control Pral. However, IT Wing has no role in administrative and financial working of Pral, due to which it can not perform its given role as per the job description; It has been proposed that Pral's BoM may be reconstituted as under: FBR Member (IT), Chairman of them BoM; Chief (IT), Member; Secretary (IT), Member; Secretary (IT),

Member; Pral Chief Executive Officer, Member; General Manager (Automation), Member; General Manager (Software Development), Member and General Manager (Finance) would be Member/Secretary of the BoM.

Sources said the present composition of Pral's Board of Directors is as under:- Chairman, FBR, Chairman of the Pral's BoD; Member (Customs), FBR, Member; Member (IR Operations), FBR, Member; Member (Admn), FBR, Member; Member (Legal), FBR, Member; Member (SP&S), FBR, Member; Member (HRM), FBR, Member and Chief Executive Officer, Pral is Member of the BoD. A new post of Member (IT), FBR has been created who is not on the BoD of Pral. It has been proposed that Pral's BoD may be reconstituted to include Member (IT), FBR, as director. – *Courtesy Business Recorder*