

Ref : KTBA/12.2022/183

Date : December 30, 2022

Mr. Afaq Ahmed Qureshi,
Member (Inland Revenue - Policy),
Federal Board of Revenue,
Islamabad.

Clause 105(A), Part-IV, 2nd Schedule to the Income Tax Ordinance, 2001 (the Ordinance)
Unwarranted Notices for Tax Audit under Section 177 of the Ordinance

Dear Sir,

Through this letter, we would like to bring to your notice an unwarranted practice being undertaken by certain Commissioners in Karachi jurisdiction whereby they are sending audit notices, despite the legal position that Income Tax Audit cannot be carried out if it has already been carried out in the last four years. The provisions are contained under clause 105A, Part-IV, Second Schedule of the Ordinance. wherein the taxpayer has been made eligible to claim exemption from Income Tax Audit both under Sections 177 and 214C of the Ordinance.

2- You would recall that Clause 105A, Part-IV, Second Schedule to the Ordinance was inserted through the latest Finance Act, 2022 and provides for restriction on frequent audit proceedings undertaken by the department. For the sake of better understanding, we hereby reproduce the whole text of the clause:

Clause - 105A:

The provisions of section 177 and 214C shall not apply to a person whose income tax affairs have been audited in any of the preceding four tax years:

Provided that the Commissioner may select a person under section 177 for audit with approval of the Board.

A bare reading of the above plainly suggests that Income Tax Audit under the Ordinance shall be conducted only for once in five (5) years. This has been provided for in very clear words completely unconditionally without and any exception.

3- There are, however, certain field formations in Karachi where the Commissioner Audit do not subscribe to the above and have carved out an exception that audit carried out under Section 214E is not covered under the above clause 105A of the Ordinance.

4- Your attention is now directed towards Section 214E of the Ordinance, which was inserted through Finance Supplementary (Amendment) Act, 2018 that provided two distinct mechanisms for closure of audit selected under the deleted Section 214D of the Ordinance. It is important here to recall that the deleted Section 214D of the Ordinance provided for compulsory Income Tax Audit in the event of, among other reasons, late filing of tax returns. The relevant para of Section 214E of the Ordinance is reproduced for your ready reference:

Section 214E - Closure of audit. —

(1) Notwithstanding the omission of section 214D, audit of income tax affairs of a taxpayer under sub-section (2) of section 214D shall be deemed to have been concluded, if—

(i) taxpayer has been selected for audit under sub-section (1) of the omitted section 214D;

(ii) notice under section 122 has not been issued;

(iii) the taxpayer has revised return voluntarily, by thirty first day of December, 2018, along with payment of 25% higher tax than the tax paid with return on the basis of taxable income and where no tax is payable 2% of the turnover and where no turnover is declared penalty under entry at Serial No. 1 of sub-section (1) of section 182 has been paid voluntarily.....

(2) Notwithstanding anything contained in sub-section (1), the Board may prescribe procedure for conclusion of audit of income tax affairs of a person automatically selected for audit under omitted section 214D.

(3) The prescribed procedure under sub-section (2) may include acceptance of declared income of a taxpayer for a tax year subject to conditions specified therein.

A plain reading of the above depicts that owing to two (2) non-obstante clauses used within a single Section, two (2) separate schemes of closure have been introduced for audits selected under Section 214D of the Ordinance. The first scheme provides amnesty from audit exclusively on the condition of payment of 25% higher income tax than what was paid with the annual return or on payment of turnover tax at the rate of 2% of the turnover where no tax was payable otherwise. The second scheme provides closure of audit by examining taxpayer records based on parameters/benchmarks given by FBR. We understand that both these schemes were mutually exclusive.

5- The parameters for the second scheme were duly provided later through a Circular 1(1)SS(TPA-11)/2020 dated April 24 2020, which are as follows:

The above three classes of persons may be scrutinized against the following parameters for each relevant tax year and decision to continue or close the audit may be taken as per para (i) or (ii) as the case may be.

1	2	3	4	5	6	7
Withholding Tax Transaction	Purchase of Properties	Purchase of Vehicles	Utility Expenses	Rent Expenses	Bank Information if available in system	Application of any Audit selection Parameter as per Audit Policy of the relevant tax year

- i. *If values in any one or more parameters, as per the system, are positive and do not match with the declaration in Income Tax return and/or Wealth statement or the field office is in possession of any third party information having bearing upon income relevant to the pending Tax Year, audit may be concluded on the basis of available record.*
- ii. *If all values in the parameters, as per the system, are matched with the declaration in Income Tax return and/or Wealth Statement or otherwise their values are returned Nil and field office is not in possession of any 3rd party information, audit may be concluded by accepting the declared version.*


6- Reverting to the Clause 105A, it is important to learn that it does not differentiate between closure / conclusion of audit under any section of the Ordinance and simply provides exemption to any one whose case has already been audited in the last four (4) years. Needless to mention that had the intention of the legislature been to exclude the closure of audit under Section 214E of the Ordinance from the purview of clause 105A of the Ordinance then the legislature would have explicitly excluded it from its purview, which it has very consciously not done so.

Conclusion:

7- Your intervention is requested to provide a direction to the field formations in Karachi jurisdiction on the matter that since every taxpayer is eligible to claim exclusion from the purview of Section s177 and 214C in term of clause 105A, Part-IV, Second Schedule to the Ordinance, once its income tax audit of previous year has been concluded under any provisions of the Ordinance including the provisions covered under the second scheme of section 214E of the Ordinance, no income tax audit can be undertaken in the next four years.

Your Direction and clarification on the instant matter is acutely necessary to avoid impeding litigation.

Thanking You,



(Syed Rehan Hasan Jafri)

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C.C to :

- i. **Mr. Asim Ahmad**, Hon'ble Chairman, FBR, Islamabad.
- ii. **Malik Amjad Zubair Tiwana**, Member-IR (Operations), FBR, Islamabad.
- iii. **Syed Ghulam Abbas Kazmi**, Member (Legal), FBR, Islamabad.
- iv. **Mr. Rana Munir Hussain**, President, Pakistan Tax Bar Association.
- v. **Press and Media**