

Regulatory Procedure

HOW TO APPROACH THE FEDERAL TAX OMBUDSMAN (MOHTASIB)



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

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1 Introduction of SMEDA

The Small and Medium Enterprises Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA has adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can be classified into following broad areas:

***Creating a Conducive Environment;** includes collaboration with policymakers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas*

***Cluster/Sector Development;** comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers*

***Enhancing Access to Business Development Services** development and provision of services to meet business management, strategic and operational requirements of SMEs.*

SMEDA has so far successfully formulated strategies for sectors including fruits and vegetables, marble and granite, gems and jewelry, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors such as enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

2 Role of Legal Services Cell, SMEDA

The Legal Services Cell (LSC) is a part of Business & Sector Development Services Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world.

LSC believes that information dissemination to SMEs on the existing regulatory environment is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate SMEs at an individual level LSC has developed user-friendly systems, which provide detailed description of laws and regulations including processes and steps required for compliance.

The purpose of this document is to provide SMEs either individuals or companies with information pertaining to Federal Tax Ombudsman. Entrepreneurs interested in enhancing their understanding about the procedures and rights can also use the document. For convenience of the readers sample of various forms, instructions on how to fill up the forms and important addresses are also included.

3 Disclaimer

Since laws and regulations are subject to change, information in this document is provided only for general information purpose and on an "as is" basis without any warranties of any kind. Use of this information is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this information and shall not be liable for any damages arising from its use.

4 Introduction

In the year 2000, the then Government established a new institution in Pakistan to redress the grievances of taxpayers in the shape of Federal Tax Ombudsman constituted under the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

The institution of Federal Tax Ombudsman is created to tackle the issues of mal- administration on the part of the officials of the tax departments. This institution has disposed of number of complaints since its establishment, and has enabled improved working of the tax administration.

The FTO has brought considerable relief to businesses during the past years in terms of ease of doing business. Businessmen have now found a level of comfort, non-existent in the past, which allows them to confidently and fearlessly make investment decisions in the knowledge that an environment exists where they can expect equity, fair play and justice without recourse to the arduous procedures of Courts and Tribunals.

5 Jurisdiction of Federal Tax Ombudsman (FTO)

Under the Law, the following can make complaints and / or initiate cases and send the same to FTO:

1. Aggrieved Person
2. Reference by President of Pakistan
3. Reference by Senate and National Assembly
4. Motion by High Court and Supreme Court
5. Federal Tax Ombudsman can also initiate adjudication proceeding on its own, if any mal-administration on the part of the Revenue Division comes to his knowledge by any means.

The Federal Tax Ombudsman shall not have any jurisdiction to investigate or inquire into matters which;

- Are pending before a Court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by it.
- Relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation.
- Relate to external affairs, defence matters and service matters.

6 Mal-administration

Under the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000, maladministration includes a decision, process, recommendation, act of omission or commission which;

- a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;
- b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;
- c) is based on irrelevant grounds;
- d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favoritism, nepotism and administrative excesses;
- e) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;
- f) repeated notices, unnecessary attendance or prolonged hearings while deciding cases involving-
 - (i) assessment of income or wealth;
 - (ii) determination of liability of tax or duty;
 - (iii) classification or valuation of goods;
 - (iv) settlement of claims of refund, rebate or duty drawback;
 - (v) determination of fiscal and tax concessions or exemptions;
- g) willful errors in the determination of refunds, rebates or duty drawbacks;
- h) deliberate withholding or non-payment or refunds, rebates or duty drawbacks already determined by the competent authority;
- i) coercive methods of tax recovery in cases where default in payment of tax or duty is not apparent from record;
- j) avoidance of disciplinary action against an officer or official whose order of assessment or valuation is held by a competent appellate authority to be vindictive, capricious, biased or blatantly illegal.

7 Procedure for Filing Complaints

A complaint shall be made in writing or on the prescribed form (Annexure A) and shall be addressed to the Federal Tax Ombudsman by the person aggrieved or, in the case of his death, by his legal representative. The complaint may be filed in person at the office or handed over to the Federal Tax Ombudsman in person or sent by any other means of communication to the Office. The Federal Tax Ombudsman shall not entertain the complaints without any name(s) or bearing fake / false identities of complainants.

Following documents should accompany the complaint:

- 1- Three copies of detailed Complaint
- 2- National Identity Card
- 3- Affidavit on Rs.100 stamp paper (duly attested by the Oath Commissioner).

An online complaint system is also available at the federal tax ombudsman website which may be accessed at www.fto.gov.pk

8 Time Limit for Lodging Complaints

A complaint shall be made not later than six months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, however the Federal Tax Ombudsman may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which he deems proper in the interest of justice to do so.

9 Investigation and Evidence

- For investigation in the matter the Federal Tax Ombudsman shall issue a notice to Secretary of Revenue Division and to the person who is alleged in the complaint to reply to the allegations made by the complainant.
- Every investigation shall be conducted in private, but the Federal Tax Ombudsman may adopt such procedure as he considers appropriate for such investigation and he may obtain information from such persons and in such manner and make such inquiries as he thinks fit.
- A person shall be entitled to appear in person or be represented before, the Federal Tax Ombudsman.
- For the purposes of an investigation under this Ordinance, the Federal Tax Ombudsman may require any Tax Employee to furnish any information or to produce any document which in the opinion of the Federal Tax Ombudsman is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation.
- In any case where the Federal Tax Ombudsman decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

10 Recommendations for Implementation

- If the Federal Tax Ombudsman is of the opinion that the matter considered amounts to mal- administration, he shall communicate his finding with a recommendation to the Revenue Division within a period of sixty days from the date of receipt of the complaint, reference or motion, as the case may be.
- The Revenue Division shall, within such time as may be specified by the Federal Tax Ombudsman, inform him about the action taken on his recommendations or the reasons for, not complying with the same.
- If, after conducting an investigation, it appears to the Federal Tax Ombudsman that an injustice has been caused to the person aggrieved in consequence of the mal-administration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the President.
- If the Revenue Division or Tax Employee does not comply with the recommendations of the Federal Tax Ombudsman or does not give reasons to the satisfaction of the Federal

Tax Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be referred to the President who may, in his discretion, direct the Revenue Division to implement the recommendation and inform the Federal Tax Ombudsman accordingly.

11 Consequences for Defiance of Recommendations

It shall be the duty of the Revenue Division and the Tax Employee to implement the finding of Federal Tax Ombudsman within thirty days of such decision being communicated to the concerned Tax Employee. In each instance of "Defiance of Recommendations", a report by the Federal Tax Ombudsman shall become a part of the personal file or character roll of the Tax Employee primarily responsible for the defiance and such Tax Employee shall be liable for contempt. The Federal Tax Ombudsman has the same powers as the Supreme Court, to punish any person for its contempt, by virtue of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

12 Important Contacts

Head Office Federal Tax Ombudsman

Federal Tax Ombudsman Secretariat
5-A, Constitution Avenue
Islamabad.
Tel: +92-51-9212316, 9212318, 9212321, 9212328
Fax: +92-51-9205553, 9212330
E-mail: info@fto.gov.pk
Web: www.fto.gov.pk

Lahore Office

Regional Office
Bungalow No.186-A Scotch Corner,
Upper Mall,
Lahore
Tel: +92-42-99201825, 99201895,
Fax: +92-42-99201893
E-mail: ftolhr@fto.gov.pk

Karachi Office

Regional Office
8th Floor, Left wing, National Insurance Company Ltd (NICL) Building, Abbasi Shaheed Road, Towards
DHA,
Karachi.
Tel: +92-21-99225059
Fax: +92-21-99225058
E-mail: ftokhi@fto.gov.pk

Quetta Office

Regional Office

1st Floor, Mashriq Plaza,
Opposite FC HQ,
Hali Road,
Quetta.
Tel: +92-81-9203021
Fax: +92-81-9202841
E-mail: ftoqta@fto.gov.pk

Peshawar Office

Regional Office
Houseno.9AB/2,
Old Jamrud Lane,
University Town,
Peshawar.
Tel: +92-91-9224200
Fax: +92-91-9224201
E-mail: ftopwr@fto.gov.pk

13 Annexure**FTO-FORM "A"**

[see regulations 3(1),(2)&(5)]

For use by the Complainant

BEFORE THE FEDERAL TAX OMBUDSMAN

Islamabad/Lahore/Karachi/Peshawar/Quetta/ Faisalabad/Gujranwala/Multan

- 1) Name of the Complainant _____
- 2) Address of the Complainant _____
- 3) C.N. I.C. No. _____ NTN/STRN No. _____
- 4) Telephone Nos. _____ E-mail _____
- 5) Complaint against Agency/Department _____
- 6) Name, address and phone No. of A.R (If any) _____

- 7) Whether the complaint relates to Small and Medium Enterprises Development Authority? (Yes/No)
- 8) Main grievances requiring redressal:
 - a.
 - b.
 (Detailed complaint is annexed)

SOLEMN AFFIRMATION

- 1) I, _____ do hereby solemnly affirm:-
 - a) That no complaint on this subject has previously been lodged with the Federal Tax Ombudsman by me, or on my behalf, in the Head Office or any of the Regional Offices.
Or
 - That a complaint No. _____ has previously been lodged on this subject.
 - b) That no suit, appeal, petition, reference or other judicial proceeding in connection with the subject matter of this complaint is pending in any Court, Board, Tribunal or authority.
 - That a case No. _____ is pending before _____.
 - c) I made a representation to the senior Officers of the Agency/Department in this connection but have failed to elicit a reply or my representation has been unjustly turned down. (Copies of correspondence are attached)

Or

- No representation was made

d) That what is stated above is true to the best of my knowledge, belief and information
Signature/Thumb impression of the Complainant _____

Dated:- _____

Form-A and Solemn Affirmation