**Executive defying Legislature**

[Dr Ikramul Haq](https://dailytimes.com.pk/writer/dr-ikramul-haq/)

December 6, 2020

The powers granted to Federal Board of Revenue (FBR) by the Legislature in 2018 under section 230F of the Income Tax Ordinance, 2001 [“the Ordinance”] to acquire any immovable property that is transferred by a person (transferor) to any person (transferee) for a consideration, less than the fair market value. It stands defied by the Executive, (the Federal Government) by not issuing notification to make it operative. It exposes the claim of making FBR an efficient tax apparatus by the Prime Minister, who is also holding the charge of Minister of Finance and Revenue.

Though the Premier keeps on making claims to recover tax from the rich, yet an effective revenue-yielding law enacted through Finance Act, 2018 by PMLN Government remains inoperative. Section 230F(22) of the Ordinance says: “The provisions of this section shall come into force on such date as the Federal Government may, by notification in official Gazette, appoint”. No such notification is issued by the PTI Government till today. This inaction has made FBR ineffective and caused loss of revenue of billions.

Thousands of transfers in immovable properties in the pre-Covod-19 period and even now are made at much lower price than the prevailing fair market value.

The best professional, according to the Prime Minister, made Chairman FBR to plug revenue leakages, especially in transactions in properties (buying and selling of files, open plots, residential and commercial buildings), is now shifting blame of his failure on what he calls “state-sponsored corruption”. However, he did nothing to make section 230F operative when in office. This is a classic case of executive defying legislature, and blaming the parliamentarians.

What has prevented the PTI Government from issuing notification? It is for the Government to explain. This inaction has facilitated developers/contractors/buyers. The big players mint billions by utilising advances from buyers. At the time of transfer/registration, in majority of cases, the value of property is understated to avoid taxes and duties both by sellers and purchasers. There are three rates: one notified by provinces through district collectors (DC rates) for collecting local duties/taxes, second notified by FBR for income tax purposes, and third the actual value between the transferor and the transferee. The purpose of section 230F was to recoup loss of tax in cases, where value is grossly understated within, six months of transfer.

The Government of PTI takes great pride in its “crusade” against corruption/tax evasion. The Premier may not even know about the inaction

The Government of PTI takes great pride in its “crusade” against corruption/tax evasion.

The Premier may not even know about the inaction. It shows that his hand-picked professional Tax Czar, advisers and FBR’s heads selected from the cadres—Pakistan Administrative Services, Inland Revenue Service, Customs—since August 2018 never told him about this blatant defiance of law by inaction on the part of executive branch of the State, which he heads.

One former adviser in Ministry of Finance, in an op-ed published under the title, ‘In the money’, on December 1, 2020, made a case for tax compliance to generate much-needed domestic resource mobilisation, but when in office never bothered to tell the Government to make section 230F of the Ordinance operative!

The salient features of section 230F of the Ordinance, extracted from FBR’s Circular No. 3 of 2018, issued on September 12, 2018, when PTI A major initiative to correct the valuation of real•was in power, are: estate for the purpose of taxation has been taken, whereby Government has introduced a new section for the establishment of a new Directorate General of Immovable property (DG-IP) in FBR.

The DG-IP, within six months of the transfer of any immovable• property, in case consideration is less than fair market value, determined by an independent valuer, for avoidance or reduction of withholding tax obligations, concealment of unexplained amount or avoidance or reduction of capital gains tax under the Ordinance, can acquire the same by paying twice the price at which the transferor and transferee have executed the transfer after giving opportunity to the affected parties, and if his order is approved by an appellate tribunal and High Court, if contested by an aggrieved party.

“The aim of the Federal Government is to make correct assessment of• fair value of the property for the purpose of raising tax demands. However, as per sub-section (22), the new provisions including the appointment of Directorate General will come into force on the date as notified by the Federal Government.

Considerable preparatory work has to be done before this notification can be issued. This includes necessary notifications regarding funds, valuation mechanism, appointment of appellate authorities and consultations with the provinces for requesting them to withdraw their valuation tables and reducing their tax rates on property transaction. Accordingly, sub-section (22) provides that the provisions of section 230F shall remain inapplicable unless a notification by the Federal Government is issued. After the issuance of the notification, provisions of the existing sections 111, 236C and 236W shall not apply whereas rates under section 236K shall be reduced to 1%. However, till the date of issuance of the said notification, tax required to be collected under section 236C, 236K and 236W shall continue to be collected. Moreover, provisions of Section  
111 shall also continue to be applicable”.

The above para of FBR’s Circular No. 3 of 2018 reproduced verbatim holds the key. The Government was to issue notification for making the law operative, which it failed to do.

What makes the situation more painful is the fact that the PTI Government was aware of its obligation and cannot plead ignorance! In fact, FBR, vide Letter No. F.No.1(01)/18-DG(BTB)/2018-19 dated November 29, 2018 clearly mentioned that “pending the said notification and prior to formal launching”, FBR is initiating the establishment of a formal structure of Directorate General IMP-IR. The composition and scope of work of DG-IP was elaborated in detail saying that DG-IMP besides performing its function will be FBR’s specialized agency on all matters relating to real estate/immoveable properties.

The details issued by FBR about DG-IP can be read at the following link: http://hrms.fbr.gov.pk/Uploads/2018/Nov/1(01)-18-DG(BTB)-2018-1911302018\_61643\_PM.pdf Hopefully, the Special Assistant to the Prime Minister (Minister of State) on Revenue, a seasoned and experienced bureaucrat, will make 230F operational and fix the responsibility of loss of revenue for inaction since August 2018 for not issuing just a notification. The Standing Committees of National Assembly and Senate on Revenue should also summon all those responsible for not implementing a law enacted by the Parliament. It is a serious charge-sheet against the PTI Government that that it kept the DG-IP dysfunctional after coming into power in August 2018, whereas Article 143 of the Constitution makes repugnant and void any provincial law in conflict with it. The term “Federal Government”, as enunciated by Supreme Court in Mustafa Impex, Karachi and others v. The Government of Pakistan (2016) 114 TAX 241 (S.C.Pak.), includes Prime Minister and the Cabinet. The Supreme Court of Pakistan may also take suo muto action for this lapse by the executive resulting into huge revenue loss that could have been used for improving infrastructure and human capital as well as providing social security network for the less-privileged, in the wake of Covid-19 endemic.

*The writer, Advocate Supreme Court, is Adjunct Faculty of Lahore University of Management Sciences (LUMS).*