

ROLE OF FTO IN PRESENT TAXATION SYSTEM

BY MUHAMMAD NAEEM SHAH ASC

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1. An ombudsman is an official, usually appointed by the president or by parliament but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or violation of rights.
2. The Mohtasib's purpose is to institutionalize a system for enforcing administrative accountability, through investigating and rectifying any injustice done to a person through maladministration by a federal agency or a federal government official.
3. In Pakistan office the Federal tax Ombudsman was established in the year 2000 to redress the grievances of the Taxpayers by promulgating the Federal Tax Ombudsman ordinance, 2000.
4. In Pakistan, the establishment of an ombudsman institution had been advocated for some time before (Article 276) of the Interim Constitution of 1972 provided for the appointment of a Federal Ombudsman and provincial Ombudsman. The constitution of 1973 also provided for a Federal Ombudsman, and the institution was eventually created through the Establishment of the office of Wafaqi Mohtasib (Ombudsman) order, 1983 (Presidents Order No 1 of 1983), which is now a part of the Constitution of Pakistan by virtue of Article 270-A
5. On going through the Mission Statement, office of FTO can be valued, by the following statements:-
 - i. MANDATE:-Diagnose, investigate, redress and rectify an injustice done to a person through maladministration by functionaries of Revenue Division/FBR administering Federal Tax Laws.
 - ii. VISION:-Eliminating tax maladministration and helping Taxpayers to receive the highest level of service and respect.

iii. MISSION:-Redressing Taxpayer's grievances by instituting accountability for tax maladministration.

iv. VALUES:-Accessibility, Efficiency, Integrity, Objectivity, Transparency.

6. Following services are provided by the FTO as displayed on Federal Tax Ombudsman, website:-

i. WHAT WE DO:- we resolve and provide relief to the public by carrying out independent investigation into complaints about Tax Maladministration. We work to put things right and share lessons learned and help improve public services as a result. Our independent complaints handling service is free and open to everyone.

ii. WHAT WE DON'T DO:- Cannot help if your complaint is about:-

- i. Matters that are Subjudice
- ii. External Affairs
- iii. Defense Matters
- iv. Service Matters

iii. HOW WE HELP:- We aim to redress Taxpayer's grievances as fairly and as quickly we can, after examining all facts. If we determine that the Revenue Division has acted wrongly, we will recommend the revenue Division to put things right for you. This can include recommending that the agency provide you relief sought, information you have a right to access and to treat you fairly and in accordance with Law.

7. As claimed the core functions of F.T.O revolve around "Disposal of complaints of Tax maladministration promptly, justly, fairly, independently investigate, and to rectify any injustice done to a taxpayer by actions of the tax employs of Federal Board of Revenue (Taxation Authority in Pakistan). Law provides FTO security of the tenure, administrative and financial autonomy and powers to refer for disciplinary action, powers to punish for contempt and No of other powers besides powers of a civil court.

8. The core objectives of FTO is to provide an efficient and effective external equalizer in the form of FTO Secretariat to the less privileged, underpowered and underserved taxpayers against tax maladministration, priority goals FTO is to induce taxpayers friendliness of Tax administration, remove tax related irritants, reduce cost of doing business and promote a conducive tax culture in Pakistan.

✓ 9. The real spirit of establishing FTO is to resolve the disputes of taxpayers. The main objective of the F.T.O Ordinance was to check to tax functionaries, if they do not behave as the law requires and to ensure that taxpayers were treated with respect, dignity and due consideration by those whose duty is to collect taxes for state.

10. I would like to highlight some of the aspects and role of the ombudsman in USA, wherein I believe there are certain points to be noted:-

i. In USA the office of the Taxpayer Ombudsman was created by the Internal Revenue Service in 1979 to serve the Primary advocate for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988, whereby the Ombudsman was granted statutory authority to issue a Taxpayer Assistance Order (TAO) "if, in the determination of the Ombudsman, the Taxpayer was suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws were being administered.

ii. In 1996, Taxpayer Bill of Rights was amended, replacing the Office of the Taxpayer Ombudsman with the office of the Taxpayer Advocate. The joint Committee on taxation setforth the following reasons for change:-

"To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the taxpayer Ombudsman is not an independent advocate for taxpayer. In order to ensure that the taxpayer Ombudsman has the

necessary stature within the IRS to represent fully the interests of taxpayer, Congress believed it appropriate to elevate the position, to a position comparable to that of the Chief Council”

- iii. In Taxpayer Bill of Rights, congress not only established the office of the Taxpayer Advocate but also described its function as under:-
 - a) To assist taxpayers in resolving problems with the Internal revenue Service;
 - b) To identify areas in which taxpayers have problems in dealings with the Internal revenue Services.
 - c) To the extent possible, propose changes in the admintrative practices of the IRS to mitigate those identified problems; and
 - d) To identify potential legislative changes, this may be appropriate to mitigate such problems.
- iv. Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local problem Resolution officers (PROs) who handled cases under the problem Resolution Program. At the time of the enactment of TBOR 2, congress believed it sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers.
- v. Finally, extending the scope of the taxpayer Assistance Order (TAO), by providing the Taxpayer Advocate with broader authority “to affirmatively take any action as permitted by law with respect to Taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. For the first time, the (Taxpayers Assistance Order) TAO could specify a time period within which the IRS must act on the order. The statute also provide that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with reasons for such action.

- vi. In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer advocate the “voice of the Taxpayer”. In its discussion of the office of the Taxpayer Advocate, the commission noted:-
- “Taxpayer Advocates play an important role and are essential for the protection of Taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS”.
- vii. In the IRS Restructuring and reform Act of 1998 renamed the Taxpayer Advocate as the the National Taxpayer Advocate mandating that the National taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his tenure as the National Taxpayer Advocate.
- viii. The definition of ‘significant hardship’ was expanded in 1998 to include four specific circumstances:-
- a. An immediate threat of adverse action.
 - b. A delay of more than 30 days in resolving taxpayer account problems.
 - c. The taxpayer’s incurring of significant costs (including fees for professional representation) if relief is not granted.
 - d. The taxpayer will suffer irreparable injury or a long term adverse impact.

11. When we compare our laws with USA we observe that:-

- a) There is no provision of passing a taxpayer assistance order if there is immediate threat of adverse action or an interim order where taxpayer is about to suffer a significant hardship.
- b) There is no check on the quality of Taxpayers Services provided by Tax Department;
- c) There is no implementation of FTO Laws in the true spirit.
- d) There is also no restraint or a time limit of a tax Employee to become advisor of Tax Ombudsman.

12. Currently I see no effectiveness and objectivity of FTO office in its true spirit, due to the reason a disappointing and discouraging situation is prevailing among the Taxpayers and Tax councils. Besides the others, one of the reasons which I see is that leaving behind its significant role, the FTO office has assumed the jurisdiction of an Appellate Authority. Power of an Appellate authority is to decide, to dispose off, or to pass an order in an appeal, where as mandate of the FTO is to diagnose, to Investigate, to redress and rectify an injustice done through maladministration. The words used in FTO ordinance as Compared to Income Tax Ordinance are extremely strong and powerful which demands strong and meaningful actions on the Part of the office of FTO in case of maladministration. I see hardly a diagnostic or Investigate approach in findings/recommendations of the FTO to rectify an injustice done through maladministration after the tenure of Learned Shoiab Suddle and J. Saleem Akhtar formers FTO's.
13. Second reason which I see is the induction of retired Inland Revenue Officers in the office of FTO as advisors to FTO and to assign them the job of investigation of injustice done through maladministration. A person who all his life supported arbitrary and perverse actions of Tax Administration how one can expect from him that he will stand against their wrong doings. It has been observed that advisors always protect the maladministration of Tax administration rather to enforce administrative accountability.
14. Third reason which I see is that FTO office cannot help a person where a complaint is about a matter that is subjudice before a court of competent jurisdiction or Tribunal or Board on Authority on the date of complaint or a matter relates to assessment of Income, determination of Liability of Tax, Interpretation of Law relating to such assessment in respect of which remedies of Appeal, Review of revision are available. If an order passed by an authority contains to matter (i) Assessment of Income and determination of Tax (ii) Maladministration. In such like situation doors of FTO are closed for there who intend to adopt a proper course of Law against the matter of assessment of Income and determination of Tax or they have to leave their right of Appeal on the matter of assessment of Income and determination of their tax liability to contest the matter of maladministration before the FTO.

15. I understand that if a matter of Assessment of income or determination of Tax is subjudice before an authority there is no bar u/s 9(2) of FTO to file a complaint before the FTO on the matter of maladministration.
16. I therefore propose that FTO should restrict itself to the extent of maladministration and should not indulge in the matters of assessment of Income and determination of Tax. I also propose the FTO should entertain complaints wherein there is a matter of maladministration although the matter of assessment of Income and determination of tax is subjudice before an Authority or Tribunal.
17. Fourth reason which I see is the attitude of the FBR when it file Representations in almost every major case and refuse to act upon the findings/recommendations of FTO on the basis of Representation. General Principal of Law is that Implementation of an order cannot be stopped until a stay is granted by an Appellate Court but in this case presumption of FBR "that by filling an representation order of FTO ceased to exist or automatically stayed" is a great hurdle in implementation of FTO's recommendations.
18. Because of these reasons we see no change or reduction in the level of maladministration despite the mandate, independence and position designated to learned FTO rather maladministration in increasing day by day.
19. Presently the office of FTO has been made ineffective and non-existent in the Tax system. We therefore propose that office of the FTO should review and reconsider the law and its systems to improve and enhance the efficiency and objectivity of office of FTO.
20. We the Tax Bars desire that office of FTO should continue to play its effective and efficient role as a Taxpayers Advocate or Taxpayer voice to eliminate maladministration in the Revenue department. We the Tax Bars ensure our support and continue this support to the office of FTO for the sake of removing tax related irritants and Taxpayer friendly administration in the country.

With these submission I Thank you all.