



## Legal Update

### Major Changes Made in the Laws relating to Prosecution and Adjudication of the Revenue Leakage Offences

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## Introduction:

1. The Federal Parliament of Nepal is currently not in session. As a result, the Government of Nepal has recently promulgated four Ordinances, which were approved by the President and published in the Nepal Gazette on Poush 29, 2081 (13 January 2025). These Ordinances are as follows:
  - o Ordinance to Amend Some Nepal Laws Relating to Promotion of Good Governance and Public Service Delivery, 2081
  - o Fiscal Procedure and Financial Accountability (First Amendment) Ordinance, 2081
  - o Privatization (First Amendment) Ordinance, 2081
  - o Ordinance to Amend Some Nepal Laws Relating to Improvement of Financial and Business Environment and Investment Increment, 2081
2. This update highlights key amendments made to several laws which are especially related to the prosecution and adjudication of the revenue leakage and associated procedural matters including:
  - o Muluki Criminal Procedure Code, 2074 (CPC)
  - o Revenue Leakage (Investigation and Control) Act, 2052 (Revenue Leakage Act)
  - o Revenue Tribunal Act, 2031
3. **Amendment to the Revenue Tribunal Act, 2031:** Section 9 of the said Act has been amended to include bank guarantee as a condition for filing appeal at the Revenue Tribunal. Though the law provided for cash deposit as a condition for filing appeal, bank guarantees were accepted in practice especially due to provisions set out in other relevant tax laws. This new addition has provided the clarity in the Revenue Tribunal Act itself.
4. **Amendment to the Revenue Leakage Act:**
  - 4.1 **Threshold for Tax Recovery Increased (Section 13A):** The threshold for the criminal prosecution under the Revenue Leakage Act has been increased from **fifty lakh** to **three crores**. Previously, this only applied to amounts less than fifty lakhs and any amount greater than that had to be investigated and prosecuted by the Revenue Investigation Department. This is particularly important as now the Revenue Investigation Department may order the respective tax office to recover the tax amounts up to three crores through regular tax assessment procedures without resorting to criminal prosecution under revenue leakage. However, this is up to the discretion of the Revenue Investigation Department and Government attorney office.
  - 4.2 Clause prosecuting intentional tax evasion has been removed. (Proviso clause removed). This also means that even if there is a clear case of tax evasion, the Revenue Investigation Department may refer to such matter to the concerned Inland Revenue Offices for assessment under relevant tax laws.

**4.3** New avenues for the settlement of the revenue leakage case have also been added. The revenue leakage cases can now be settled (a) prior to prosecution, (b) when the case is sub judice, and (c) during the implementation of the decision. Additionally, the case can be withdrawn by the Government as well. Previously, the Revenue Investigation Department would investigate such cases and file the case at Court upon taking approval from the Government Attorney Office. Once the case was filed, there was no scope for milapatra (settlement) or withdrawal. Such provisions were absent and therefore even taxpayers willing to pay the charged amounts had to face criminal prosecution. The addition of these provisions has brought relief to taxpayers willing to pay the charged amounts and avoid the hassles and risks of prosecution.

**4.4 Settlement prior to prosecution (Section 13A(7) added):**

**Eligibility:** Taxpayers willing to settle outstanding liabilities, including the principal tax amount (*biggo*) and applicable fines (*jariwana*), before the filing of a court case.

**Process:**

- The taxpayer must submit a formal application to the Revenue Investigation Department, expressing willingness to pay the outstanding dues.
- Upon receiving the application, the Department is obligated to accept the payment of the **biggo** and fines and forward its decision not to prosecute to the Government Attorney Office.
- The Government Attorney Office is required to approve and finalize the decision not to file the case.

**Note:** The language in the ordinance makes this provision mandatory, meaning both the Revenue Investigation Department and the Government Attorney Office must comply once the taxpayer meets the eligibility criteria.

**4.5 Settlement during hearing of Case and during implementation of decision (Milapatra) (Section 24A added):**

**Eligibility:**

- The defendant must be involved in a case that is either:
  1. Filed and sub-judice in court, or
  2. At the stage of decision implementation after the court has rendered its judgment.
- The defendant must be willing to pay the outstanding dues (**biggo**) and applicable fines (**jariwana**).

**Process:**

1. **Application Submission:** The defendant submits a formal application requesting a **milapatra** and agrees to pay the dues and fines.
2. **Approval:** The **milapatra** is executed upon the opinion of the Government Attorney.
3. **Approval by the Court:** The Court must approve the milapatra.

4. **Release of Assets:** The frozen movable and immovable assets of the defendant are released as part of the reconciliation process.

5. **Impact on Punishment:**

- If the settlement is completed, the punishment of imprisonment is waived.
- Milapatra can be undertaken at any stage of the case, including post-judgment.

**4.6 Withdrawal of Case (Section 24B added):**

**Eligibility:** It applies to all cases except in situations where the acts of tax evasion are carried out with the knowing intent or mala fide intention to evade tax.

**Process:** The case can be taken back pursuant to the procedure under the MCrPC

5. **Amendment to the CPC:**

5.1 **Provisions relating to Milapatra (Settlement) (Section 117 and Section 120 amended):**

- Milapatra can also be done in cases relating to banking offence through dishonour of cheques, criminal betray of trust and extortion.
- The milapatra can also be done in cases sub judice at any tier of Court or even in cases where the decision implementation is to be done.
- If milapatra is done, the imprisonment, fine or fees as per the judgment will be stricken off.

5.2 If milapatra is done after the mediation (melmilap) in individual party criminal cases accordingly, the imprisonment, fine or fees as per the judgment will be stricken off.

5.3 **Changes in the Appeal Process (Section 137(4) and 137(6) amended):** If any defendant has deposited security or guarantee at the Trial Court, the defendant may file appeal at the Appeal Court by depositing additional 15% of that security or guarantee instead of full amount. This is especially relevant for cases such as revenue leakage, where the *biga* and fine are of huge amounts and in most cases the defendants will not be able to deposit entire amount to appeal the case.

5.4 Additionally, if the trial court has given acquittal to the defendant, and the Government appeals the case, the defendant will not have deposited any security or guarantee. If defendant is convicted on the Appeal, the defendant can appeal at the Supreme Court by depositing an amount equivalent to the imprisonment period, calculated at Rs. 300 per day.

5.5 If a person is unable to deposit the security or guarantee to file appeal, the defendant must remain imprisoned while filing appeal. However, the duration for mandatory release on **Taarikh** has been increased from 6 months to 1 year if the Court hearing the appeal does not decide the case within this timeframe.

- 5.6 Facility for First time Offenders (Section 155(1) amended):** First time offenders imprisoned for 1 year or less than 1 year, can apply for release from prison by paying the amount equivalent to the imprisonment period. The Court shall issue order to not require imprisonment by paying the amount accordingly. Previously it was at the discretion of the competent court which was required to consider several factors for providing such facility. Now, the amendment requires to grant such facility to the defendant as a matter of law.

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