The Institute of
Chartered Accountants
of Pakistan

CA
PAKISTAN

Budget Proposals

2016-2017

www.icap.org.pk

The Institute of
Chartered Accountants
of Pakistan

Budget Proposals 2016 - 2017

Composition of Committee on Taxation

- Rashid Ibrahim - **Chairman**
- Imran Afzal
- Asif Siddiq Kasbati
- Shaikh Saqib Masood
- Habib Fakhruddin
- Ashfaq Yousuf Tola
- Adnan Ahmad Mufti
- Muhammad Awais
- Asif Haroon
- Rafqat Hussain
- Ejaz Hussain Rathore
- Rizwan Bashir
- Mohammad Younas Ghazi
- Syed Khalid Nafees Zaidi
- Muhammad Aqib Zulfiqar
- Kamran Iqbal Butt
- Hamid Masood
- Mohammad Arif Ashraf

President's Note

The Institute of Chartered Accountants of Pakistan (ICAP) is a premier regulatory accounting body working in the national interest, and is committed to work for building a prosperous tax culture in Pakistan in order to help Pakistan achieve sustained growth.

The Tax-to-GDP ratio is still the lowest in the region and not sufficient for sustainable economic growth. The country is facing wide budgetary deficits and the government is compelled to recourse to short term measures like tax amnesties and withholding taxes. Further, the provincial tax on services without intra provincial and federal harmonisation has created additional complications for the genuine tax payers.

For rapid and sustainable economic growth, it is imperative to tax unproductive sectors to force shifting of funds to productive sectors having tax incentives. At the same time, tax administration needs to be improved to bridge the tax gap. The need of the time is long term planning involving all stakeholders.

For achieving the goal of an efficient and integrated tax administration, it is imperative that there should be independent tax policymaking forum, comprising of chairman Federal Board of Revenue (FBR), nominees of parliament, economists and other professionals which should develop an effective and dynamic strategy and monitor implementation of the tax policy. The FBR should only be a revenue collection and policy implementation body.

The Institute has always advocated for documentation of the economic activities and long term tax planning. Recourse to short term measures due to the budgetary pressure has adversely affected the economy resulting in increasing inflation and deterrent to investments in the economic development of the country. It is hoped that these proposals will be given due consideration in the forthcoming budgetary process.

I would like to express my deepest appreciation for the efforts of the chairman Rashid Ibrahim,, and the members of the Committee on Taxation of the Institute for their valuable input.

Hafiz Mohammad Yousaf

Foreword

The Institute of Chartered Accountants of Pakistan's Committee on Taxation has been constantly making efforts to identify areas where reforms are needed for broadening the tax base. The prime objective of these proposals is to assist the government in improving revenue collections, ensuring voluntary tax compliance and building tax payers' confidence leading towards tax compliant culture.

There is a consensus amongst the tax expert that most of the problems are stemming from the weakness in Federal Board of Revenue in their failure to effectively implement the fiscal laws and ensure compliance to taxation laws. There is a dire need to upgrade the Human Resource of the FBR, IRIS software and the Governance structure of the Board. We have added a series of suggestions on this area as well.

The corporate sector which is the most documented segment of the economy has been neglected due to inadvertent measures taken by the Government in order to cater annual budget targets. Furthermore the manufacturing sector which contributes to GDP the most carries a greater burden of tax. The service, whole sale/retail, transport and the agriculture business sectors are still not fully documented hence their contribution to the national exchequer is extremely low and most of them are out of the tax net. Even 2.9 million persons having commercial electricity connections are hardly in the tax, and VTCS Scheme has been failed.

Appellate process which has a vital role in facilitating the tax payers, need to be revamped. Currently the tax payers are compelled to recourse to the courts for obtaining stay against the decision of the tax authorities.

Tax Audit is yet another weak side of the Federal Board of Revenue (FBR) as well as Provincial Authorities, leading to deletion of almost demand at appellate forum or courts. There is urgent need of capacity building of the field formation officers with specialised training to undertake the challenges of tax audit under one roof by representation of all revenue authorities instead of audit, revision, rectification and monitoring under 3 federal and 4 provincial tax laws. An effective audit acts as deterrent against misreporting, frauds and tax evasion.

The tax on services through provincial laws is creating complications for the genuine tax payers. Complete harmony in federal and all provincial sales tax laws, interpretation thereof and single return showing federal & provincial figures is required among the so as to relieve the tax payers from unwarranted litigation, undue hassles and reduce cost of doing business.

Registered person of all indirect taxes are withholding tax agents is extra burden for registered sector and be eliminated. Core reason behind its introduction was to gather data of potential tax payers and minimize undocumented economy, which has not been achieved. The purpose of these sections was not to generate more revenue.

I must appreciate the hard work of all the members of the Committee on Taxation, who have diligently worked to put up these recommendations, especially the respective chairmen of sub-committees on direct and indirect taxation Mr. Imran Afzal and Mr. Asif Siddiq Kasbati respectively.

Rashid Ibrahim
Chairman Committee on Taxation

Table of Contents

INTRODUCTION 02

KEY RECOMMENDATIONS 03

ADMINISTRATIVE REFORMS 07

POLICY BOARD 07
TAX PAYER'S COMPLIANCE 07

DIRECT TAXES 14

POLICY ISSUES 14
DOCUMENTATION, RESOURCE MOBILIZATION AND BROADENING OF TAX BASE 37
REMOVAL OF HARDSHIPS 41
TECHNICAL AND EDITORIAL 68

INDIRECT TAXES 78

POLICY ISSUES 78
SALES TAX ACT, 1990 85
SALES TAX RULES, 2006 96
SPECIAL PROCEDURES/S.R.O 100
FEDERAL EXCISE DUTY 2005 103
SINDH SALES TAX ON SERVICES 108
PUNJAB SALES TAX ON SERVICES 114
KHYBER PUKHTUNKHWA SALES TAX ON SERVICES 120
BALOCHISTAN SALES TAX ON SERVICES 123

REFERENCE INDEX 124

INTRODUCTION

Tax to GDP ratio of Pakistan is far from satisfactory. Tax collection and implementation of revenue laws are the main hindrance in achieving even the desired targets which represent a small percentage of potential. Tax evasion needs to be tackled with strong measures. However tax compliant taxpayers should be extended supportive interface with the tax department. Government had a difficult task in hand and walking a tightrope between phasing out exemptions, introducing strong measures and ensuring that businesses remain incentivized for local and foreign investments. Complicated tax compliance requirements also require simplification. Appropriate measures envisaged in Base Erosion and Profit Shifting (BEPS) based on the principals devised by OECD, would face minimum resistance from foreign investors, should be introduced to check transfer pricing. Capacity to check transfer pricing within FBR is also required substantial improvement.

Development of manufacturing sector is answer to many problems, which should be encouraged by extending incentives and a consistence and stable tax policy.

Good governance of tax implementation with special focus on process reforms and effective IT-enabled processes, need to be introduced, to remove irritants for the taxpayers in their interface with regulators. Simplification and rationalization of tax filing and compliance should be the core objective for proposing amendments in tax statutes through comprehensive review. Ultimate goal should be to improve “ease of doing business” to create a more positive taxation environment for attracting investment by local and foreign investors.

Harmonization of indirect taxes introduced by provinces also requires immediate attention of FBR and provincial revenue authorities.

Institute fully endorses the recommendations of Tax reforms Commission set up by the Government under the Chairmanship of Mr. Masood Ali Naqvi, FCA.

KEY RECOMMENDATIONS

POLICY BOARD

The policy Board created under Section 6 of the Federal board of Revenue Act, 2007 should be entrusted with formulation of fiscal policy making as a support to legislative function. The board should be headed by Minister of Finance and should include the Minister for Planning and the Chairman of the respective committee of both houses of Parliament, along with the Chairman FBR, Secretary Finance and members from cross section of civil society.

INCREASING TAX PAYERS COMPLIANCE

FBR should to develop a comprehensive frame work for 'Compliance Risk Management'. This program should comprise of identification, assessment, prioritization, and treatment of compliance risks, and the monitoring and evaluation of the impact of treatment strategies as a part of a revenue body management strategic process.

To effectively deliver on the above programs the FBR would need appropriate resources and a methodology to allocate these resources in a most rational manner. The issues of capacity, capability and governance at FBR needs attention on urgent basis and an approach is required to address the issue of HR management, autonomy, governance and oversight mechanism on short, medium and long term basis.

The FBR Head Quarter needs to be reorganized with functional specialization clear flowing all the way down to the level of field formations at LTU and RTO levels. Four functional divisions need to be created in IR namely Operations/Enforcements, Tax payer's audit, Registrations (broadening of tax base) and litigation support/legal at FBR with clear demarcated staff at field formation level.

The Federal Board Revenue Act 2007 needs to be suitably amended to allow employment of high caliber professional at market based salaries to augment and strengthen the management at Head Quarters and strengthening its enforcement and compliance function at field formation levels. As a short term measure FBR should induct professionals on contract basis on MP grades.

In the longer run we need to work on the idea of creating a specialized Tax services cadre totally separate and independent from other civil services of Pakistan with its own rules and regulations. This would also require a complete revamp of Directorate of training to convert it into a Centre of Excellence. The Government may carry out an independent study for the purpose.

DIRECT TAXES

- The present Corporate Tax rate of 32 per cent is one of the highest in the entire region. It should be reduced to bring it at par with other competitive economies and to provide incentive for formation of organized and documented sector. (2.1)
- The higher rates of withholding tax for 'Non-Filers' are also the applicable rates of final tax, even if they become filers. Thus, there is no incentive to become a filer. The rates of final tax should be provided separately in such a way that both for 'Filers' and 'Non-Filers' such rates are same. (2.2)
- The income of association of persons (AOP) of the professionals, prohibited from incorporating as a limited company, should not be taxed in hands of the AOP and instead share of each partner be taxed in his/her hands. (2.2)
- The term 'Reserves' should be defined as 'undistributed profit for the year', in conformity with the judgment reported at 2004 PTD 1135 and lacuna in section 5A of the Ordinance, regarding taxation of un-distributed reserves again and again in the following years be removed (2.5)
- In order to promote corporatization the small companies should be brought at par with association of persons and individuals by providing the threshold of turnover of Rs.50 million for the purposes of withholding agent under Section 153. (2.11)
- Corporate sector (except for income from exports) should be excluded from final tax regime unconditionally. Alternatively, the corporate sector be excluded from the final tax regime and subjected to minimum tax with the facility to carry forward the difference of actual tax liability and minimum tax for adjustment against the normal tax liability. (2.12)
- The amendment made in Section 130 (3)(c) allowing a departmental officer to become judicial member of ATIR should be withdrawn. Further, a condition be placed on the officer of Inland Revenue appointed as Member ATIR that such person will not be transferred back to the department of Inland Revenue. (2.15)
- Section 111(4) should be abolished or alternatively its applicability should be made subject to scrutiny if it exceeds the limit prescribed by the State Bank of Pakistan. Exemption may be given to remittances by overseas non-resident Pakistani to a relative as defined in Section 85. (2.16)
- There should be policy decision to do away with all amnesty schemes. (2.17)
- To promote, encourage and incentivize export of services, it is proposed that income from export of all types of services should be exempted like IT enabled services. (2.18).
- Tax payer should be allowed a compensation for disputed tax demand, recovered but later deleted in appeals. This will bring fairness in the process of collection and payment of tax system and will also enforce accountability on the FBR field force. (2.24)
- The decision of ADRC should be made binding on FBR, and only in case of serious reservations, FBR may be allowed to appoint another Committee for review of the decision of the ADRC. (2.26)

- Deduction of taxes at standard tax rate of 1% in spite of tax credits under sections 65B, 65D and 65E results in piling up of refunds and unnecessarily to the financial cost for Exporters. (2.29)

- Tax Credit under Section 65E is restricted to investment in plant and machinery. Expansion of plant or undertaking a new project involves investment in factory building and manufacturing related infrastructure and as such these types of investments should also be made eligible for tax relief. (2.32)

- Islamic modes of financing should be treated at par with the financing obtained from conventional financial institutions for the purpose of computation of income tax liability In order to provide tax neutrality treatment to customers of Islamic financial Institutions. (2.37)

- Withholding tax at the rate of at least 5% and 10% on natural gas consumption by industrial and commercial consumers respectively should be introduced in order to broaden the tax base.(3.3)

INDIRECT TAXES

- Revenue authorities should decide the basis of levy of indirect tax which can be ORGINATION or TERMINATION, to establish jurisdiction of taxation of services. (6.1)

- Standard tax rate should be reduced to 15% and should further gradually be reduced to 10% in the subsequent years. The lower tax rate will encourage the unregistered taxpayers to get them registered. (6.2)

- It is proposed that all Presumptive / Value Addition / Fixed Tax Schemes should be abolished and all such sectors / goods may be brought under the uniform tax regime. (6.3)

- To promote registration and dealing with registered and organized sector, incentive may be offered to general public as well as registered persons by announcing an scheme in this respect, if they deal only with registered and organized sectors. (6.4)

- Values at which import shipments are cleared needs to be made public. Transparency in collection of taxes at import stage will discourage mis-declaration, evasion of duties, help industry to fairly compete with unscrupulous imports and also the Government to benefit from the increased revenue. (6.7)

- The biggest element of corruption in sales tax is "refunds", these are arising in zero rated reduced rated as well as normal tax regimes, where the supplier purchases invoice without any supply, and these are commonly known as flying invoices. In order to reduce the risk of claiming inadmissible input tax, the use of electronic invoicing should be promoted.(6.8)

- As per Section 124A of the Ordinance any issue decided by the Appellate Tribunal Inland Revenue or the High Court, is given effect in the returns / orders for the subsequent period. It is suggested that similar provision should also be introduced in the ST Act in order

to facilitate registered persons by bringing procedural harmony between Sales Tax and Income Tax Laws. (6.10)

- An Indirect Tax Settlement Commission should be formed in the ST Act on the same pattern as ITSC was in vogue prior to promulgation of Finance Ordinance 2000. To reduce tax disputes and enhance Government revenues without recourse to Court of Law. (6.13) On items included in 3rd Schedule of the ST Act, sales tax is recovered from the manufacturer at the retail price which is against the principles of VAT. Items specified in the Third Schedule may gradually be deleted. (7.22)

ADMINISTRATIVE REFORMS

1.1 POLICY BOARD

1.1.1 Taxation policy is the fundamental part of the overall economic policy and planning of any country. This requires Transparency, Participation and Independence. In all the developed societies there is interactive participation of the stakeholders in policy formulations.

1.1.2 In the past due to lack of democratic structure such process could not be undertaken meaningfully. Potential revenue has been compromised due to lack of taxation policy making that is essential for the sustainable growth in the revenue.

Recommendations

1.1.3 The prime objective of the Policy Board, which was formed under Section 6 of the Federal Board of Revenue Act, 2007 (as amended by Finance Act 2011) should have been to formulate national tax policy in consultation with the stakeholders. Unfortunately, this Section has limited the role of the Board as facilitator i.e. providing guidance in framing fiscal policy and so on. This Section needs to be properly amended by broadening the scope of the function of the Board to include the formulation of fiscal policy making as a support to legislative function. Moreover it can also act as an oversight for the performance of the FBR.

1.1.4 The Board is currently headed by the Minister of Finance with more than five Federal Ministers as members of the Board along-with the chairman of the respective committees of the Parliament. We are of the view that the existing composition of the board in too heavy and would make it non-functional to carry out its objectives. Accordingly we feel that it should have the Minister for Planning as a member along-with the chairman of the respective committee of both houses of Parliament, other than the Chairman FBR, Secretary Finance and six members from cross section of civil society comprising of the eminent economists, intellectuals, technocrats and representatives of major stakeholders viz. FPCCI, Tax Bar Associations, trade bodies, Institute of Chartered Accountants of Pakistan and other accounting and professional bodies.

1.2 INCREASING TAX PAYER'S COMPLIANCE

1.2.1 Tax payer compliance is the most critical issue for any taxation system in any country of the world. In an ideal circumstance it means that all citizens and businesses would satisfy their obligations under the tax law to register where specifically required, and to voluntarily declare and pay on time their tax liabilities, all calculated fully and accurately in accordance with the law. This statement encapsulates four basic tax compliance obligations of citizens and businesses that generally speaking must be administered by all revenue bodies in accordance with their respective tax laws:

a) To register for tax purposes;
b) To file tax returns on time (i.e. by the date stipulated in the law) or at all;
c) To correctly report tax liabilities (including as withholding agents); and
d) To pay taxes on time (i.e. by the date stipulated in the law).

1.2.2 The tax payer compliance is a primary goal for any revenue authority and to quote:

"The primary goal of a revenue authority is to collect the taxes and duties payable in accordance with the law and to do this in such a manner that will sustain confidence in the tax system and its administration. The action of tax payers-whether due to ignorance, carelessness, recklessness, or deliberate evasion- as well as weakness in a tax administration means that failure to comply with the laws is inevitable. Therefore the tax administration should have in place strategies and structures to ensure that non-compliance with the tax law is kept to the minimum."

Analysis of Existing Situation

1.2.3 There is a broad consensus amongst various stake holders that one of the major reasons plaguing the national tax system is stemming out of the failure of FBR to ensure the tax payer compliance. A lot of efforts have been made in past to improve & modernize this function, but despite these efforts it has not been able to deliver the desired objective of satisfactory tax payer compliance which is also evident from lower tax to GDP ratio. This has resulted in non-availability of enough resources for the GOP to finance its expenditure. The tax to GDP ratio at 9% is one of the lowest in the region and is having a devastating effect on the economy and people of Pakistan.

1.2.4 The tax system is marred by menace of tax evasion, under reporting, tax fraud, corruption, smuggling, and under invoicing to name the few. This inequity in the system is also hitting hard to compliant tax payers, as there are no level playing fields and they have to compete with tax dodger's\evaders, which is making their businesses unfeasible.

1.2.5 The failure of FBR to collect the right taxes and meet the budget targets results in resort to ways and means by the field formations which has negative impact on economy and businesses as well as trust of taxpayers. The honest tax payer has to bear the brunt of excesses by department and the burden of those who connives and gets away in the system. The examples of the same are stoppage of tax refunds due including VAT refunds, raising of arbitrary demands, collection of advance and undue taxes etc.

1.2.6 It would be appropriate to quote few excerpts from executive summary of reform report issued by Commission headed by Mr. Shahid Hussain in 2001 which is still relevant to date.

"Pakistan's fiscal crisis is deep and cannot be easily resolved. Taxes are insufficient for debt service and defense. If the tax to GDP ratio does not increase significantly, Pakistan cannot be governed effectively, essential public services cannot be delivered and high inflation is inevitable. Reform of tax administration is the single most important economic task for the government. Consequently, in June 2000 the Chief Executive appointed a Task Force to review the tax administration and make recommendations to improve it.

An effective revenue organization must comprise trained and dedicated persons with integrity, transparent processes, a comprehensive information system, and taxpayer education. This report suggests radical reform of recruitment, training, compensation, and performance management. It recommends self-assessment, selective audit, and expansion and upgrading of information management. It emphasizes reduction of

discretion and direct contact between tax collector and taxpayer. Indicative transitional measures are suggested for most issues.

The current management of Central Board of Revenue has taken creditable initiatives on process and reform. However, much more is needed and on a sustained and comprehensive basis. The Task Force's recommendations for tax administration go far beyond what can be done for the rest of the civil administration. Yet, improvement in the collection of taxes is crucial that government cannot wait, nor will half measures do.

The measures suggested will substantially reduce the adversarial relationship between taxpayers and tax collectors, improve the efficiency and morale of the tax administration. There is a high probability that these measures will increase tax compliance and reduce leakage. There should be significant increase in the tax to GDP ratio."

1.2.7 The above report was followed by a reform funded by World Bank, which are being carried since 2004. A lot of changes were made as a part of these reforms including setting up of LTU's and RTO's. Strengthening of IT function, conversion of returns to electronic data base, FBR portal, PERN software, improvement in pay structure, improved infrastructure etc.

1.2.8 A semi autonomy was also granted to FBR vide Federal Board of Revenue Act. 2007 to facilitate the reform process. The salient features of this Act was to grant power to FBR to carry out its strategic objective of modernization of taxation systems and broadening of tax regime in an efficient and effective manner. Interestingly the first power under Section 4 is to implement the administrative reform agenda. This law also provides wide powers as to HR management to effectively run the organization. An amendment was also made in the above Act in 2011 providing for creation of policy board headed by MoF to provide guidance on fiscal policy matter to FBR.

1.2.9 The FBR has oversights in shape of Internal and External Audit. The Internal Audit is carried out by a Directorate of Internal Audit, a wing established under the FBR and reports to the Chairman. The Internal Audit wing is also not delivering the desired objectives of improvement and efficiency of the operations and accountability of the discretionary decision making process but rather proving counter-productive.

1.2.10 There is External audit in the shape of audit by Auditor General of Pakistan. The external audit is the oversight by parliament and out of the domain of this commission but is a futile exercise which result waste of thousands of hours of FBR, AGP and parliament committee with no underline improvements.

1.2.11 Despite the above efforts we have not been able to make any head way and our collection stand at even a worse positon than in 2000 when compared in terms of tax to GDP ratio. There is a massive evasion and revenue leakage still at large at almost all levels of economy. So, the question arises what went wrong and why the desired results could not be achieved despite spending of so much time money, and energy, and a painful delay in raising enough resources to ameliorating the misery of the masses.

Recommendations

1.2.12 We need to address this issue by developing a comprehensive response to the current issues being faced by FBR. In the short run, we need to analyse the issue of compliance in

Pakistan on urgent basis and come up with comprehensive frame work on 'Compliance Risk Management'. This program should comprise of identification, assessment, prioritization, and treatment of Compliance risks, and the monitoring and evaluation of the impact of treatment strategies as a part of a revenue body management strategic process.

1.2.13 In order to ensure the effectiveness of above program there should be developed a 'Compliance Monitoring Framework' which can be progressively enhanced overtime, and include a range of measures and indicators for each of the major risk type administered by the FBR. The FBR should also document its approaches and result of their monitoring efforts to encourage greater understanding and a dialogue among various stakeholders.

1.2.14 It must be understood that in-order to effectively deliver on the above programs the FBR would need appropriate resources and a methodology to allocate these resources in a most rational manner. The review of the existing structure raises a serious question as to the capability of the existing organization to develop and undertake such a work in an effective and efficient manner.

1.2.15 Therefore we need to address the capacity, capability and Governance issues at FBR on urgent basis. Accordingly, an approach is required to address the issue of HR management, Autonomy, Governance and Oversight mechanism on short, medium and long term basis. It must be borne in mind that any effort of administrative reform that is no implemented in full or in a piece meal manner will fail the effort and would become counter-productive. We are restricting our comments in this paper to Governance structure and HR only.

FBR Head Quarter

1.2.16 An effective and robust HQ is critical for a well-functioning Revenue Administration. A reform of Governance and organizational structure are key for success of any new initiative. Most of the modern tax administrations are organized on functional lines with a particular roles assigned to headquarter and to operational units. Each functional area (tax payer service, audit, registration, legal and litigation support, arears and enforcement etc.) is responsible for (1) Strategic and Operational planning; (2) Development of national program; (3) the provision of technical advice; (4) the establishment of resource level and performance targets and measurement systems; and (5) monitoring and evaluation of field operations.

1.2.17 The FBR though organized on functional lines is connected with field formations through centralized authority of Member custom and Member IR. The Member Tax Payer Audit and Enforcement are only acting as policy maker and have no role in execution, monitoring, control and accountability of the entire process. This results in total disconnection between the functional head with functional lines at field formation level and resulting in failure of objectives. This is a serious issue and need to be addressed on urgent basis.

1.2.18 Under the present set up, the member operations IR & Customs are the de-fecto bosses of the entire field formations irrespective of their functional line. The rest of the functional members including member audit and enforcement are connected through dotted lines and practically have no control on field formation officers.

1.2.19 The member operation due to the very nature of his job is over-burdened and focuses on tax targets and therefore all other important functions get scarified in pursuit of the same. And in fact this distortion is responsible for part of the mess.

1.2.20 Moreover, the division of staff at field formations though initially organized on functional lines till Commissioner Level has now been diluted to IAC level resulting in further chaos. The real benefit cannot accrue from functional specialization unless it is directly connected and controlled by functional top management at Head Quarter level. The failure of this initiative was also due to reason that this functional specialization had no top ownership at FBR level.

1.2.21 Another important area of broadening of tax base is also under a DG, which also report indirectly to Member Operations. There has been a major failure in increasing the number of tax payers and the current arrangement indicates towards the lack of importance to this very critical area.

1.2.22 Moreover the FBR HQ also lacks capacity at both professional and technical level. Due to this inability a professional ownership and effective oversight capacity is not available at HQ level to undertake tax payer risk and compliance programs.

Recommendations

1.2.23 The FBR Head Quarter needs to be reorganized with functional specialization clear flowing all the way down to the level of field formations at LTU and RTO levels. Four functional divisions need to be created namely in IR viz. Operations/Enforcements, Tax payer's audit, Registrations (broadening of tax base) and litigation support/legal at FBR with clear demarcated staff at field formation level. All the staff at the field formation level should be divided in these functional lines directly reporting to functional head at FBR.

1.2.24 The functions other than those specific to Audit, Registration and legal support may be clubbed under Member operations such functions to include return processing, records, enforcement, refunds, arears etc.

1.2.25 This re-organization will help in development of risk based compliance programme by each division and a complete ownership and accountability of the programme. It would also allow an effective review and oversight of the implementation function being carried out at field formation levels. Analysis of results stemming out of action taken and continuous improvement in methodology resulting in improved compliance and achievement of overall objectives. This would also allow a greater communication and exchange of information between head quarter and field formations, which is essential in any functional based organization. For example, a properly structured head quarter audit function, in Inland Revenue, would be in daily communication with audit units in the field discussing strategy and plans, providing guidance on cases and monitoring results.

1.2.26 The Custom wing should also be moving to function-based structures with strong headquarter units capable of providing high quality technical advice to the field and implementing modern approaches to risk management in areas such as Valuations, Transshipment fraud, Post release Audit, interdiction and intelligence etc.

HR Management

1.2.27 The first and foremost area that needs focus is the Human Resource at FBR. The Shahid Hussain report clearly spelled out a reform to recruit, train and measure performance

of human resource. It appears that this area was neglected the most in the subsequent reforms process.

1.2.28 The staff employed by FBR comes from various academic disciplines and are recruited through civil services recruitment process by Public Service Commission. They are given six month common training and then they are send for specialized training in Inland Revenue Academy and Custom Academy for another six months for specialized training in Tax laws, Accounting and Business laws. It can be safely concluded in today's world of technology, online banking, e-commerce and complex transaction, the stuff is completely incapable of performing the task assigned to them.

1.2.29 The tax audit is a core function in any Revenue service especially in the self-assessment regimes. Effective tax audit is one of the most effective tools to ensure compliance to law by the tax payer and has a direct correlation to under reporting in the system. This core function is being looked after by part of about 2000 officers and there is a serious lack of capacity to perform any type of meaningful tax audit both at the Head Quarters and at field formations.

1.2.30 If we look at the HR profile in FBR, one finds that more than 90% of the staff consists of persons of grade 16 or below with head count of about 20,000. The total officers above the rank of 17th grade and above are 1,966. This profile itself speaks about the working of the organization. The absolute numbers and the ratio of support staff to professional staff is untenable. This 90% staff represents the part of the problem as they are the people who are surplus in the organization, lack ability and are in-fact counter-productive.

1.2.31 The Shahid Hussain's committee also identified that among other reasons the major causes of corruption in FBR are low wages and lack of accountability. It was recommended that a fully monetized compensation at fiftieth percentile of the compensation of the local banks as comparators for FBR salaries. However the above recommendation was modified to the extent that all employees were allowed two salaries and this additional cost to the exchequer failed to give desired results as this raise was given as right rather than a reward for performance. Moreover this raise is still far below the bench marks recommended by the Commission.

Recommendations

1.2.32 To respond to challenges being faced by the FBR, the Federal Board Revenue Act 2007 needs to be suitably amended to allow employment of high caliber professionals at market based salaries to augment and strengthen the management at Head Quarters and strengthening its enforcement and compliance function at field formation levels. As a short term measure FBR should induct professionals on contract basis on MP grades.

1.2.33 As a tax administration has to deal with state of the art aggressive tax planning schemes involving cross border financial transactions, a tax audit solely comprising of internally promoted auditors could encounter difficulties detecting and analyzing these schemes effectively. Therefore, FBR can also alternatively think of induction of mid-career recruitment of experience tax consultants with experience in law and accounting directly into higher grades. This measure would be an effective counter measure and would also attend to the needs of large taxpayer unit with large size clients.

1.2.34 In short to medium term the curriculum of the training directorate needs to be augmented and the training made more rigorous. The period of specialized training should be extended to at-least one year to cater for modern external economic challenges. Moreover, a minimum of three months practical training should be mandatory before a formal posting to make the officer well versed with all practical aspects.

1.2.35 All best performers in training and high achiever should be allowed to choose the audit wing and registration wing in the order of priority. All the staff in these wings be allowed initially to get double salary provided they maintain a certain level of performance criteria. Double compensation should also be offered to outstanding performers in operation or service and support wings.

1.2.36 The training needs to be a continuous part & parcel of professional staff at FBR. The Directorate should offer executive training programs for all levels of staff at the FBR. These executive courses should be mandatory and performance at these courses should be linked with future promotions till grade 20. Moreover the high performers may be allowed to stay in Audit and Registration wings.

1.2.37 In the longer run we need to work on the idea of creating a specialized Tax services cadre totally separate and independent from other civil services of Pakistan with its own rules and regulations. This would also require a complete revamp of Directorate of training to convert it into a Centre of Excellence. The Government may carry out an independent study for the purpose.

DIRECT TAXES

POLICY ISSUES

2.1 RATE OF CORPORATE TAX

The present Corporate Tax rate of 32% is one of the highest in the entire region. China, which provides reasonable opportunities for the establishment of manufacturing sector, operates with the rate of tax of around 25%. This is effectively a disincentive to multinational groups for locating their manufacturing base in Pakistan. Malaysia and Sri Lanka have also brought down their corporate rate of tax to 25% and 28% respectively, whereas in India current tax rate will be reduced to 25% over next four years. In Europe, where tax rates are generally high, corporate tax rate is however in the range of 20% to 25%.

Recommendation

The rate of corporate tax should be reduced to 25% for manufacturers and 30% for others, to bring it at par with other competitive economies and to provide incentive for formation of organized and documented sector.

Rationale

Effective tax rate for corporate sector which is 46.50% (including tax on dividend of 12.50% and Workers Welfare Fund of 2.00%) is too high when compared with the other category of persons doing business in Pakistan as well as in comparison with the tax rates applicable in the region and internationally.

2.2 INCENTIVE FOR NON-FILERS TO BECOME FILERS

A positive measure has been taken by introducing higher rates of withholding taxes for 'Non-Filers' under various provisions of the Ordinance.

On the other hand, the rates of withholding tax and final tax, except for dividend and profit on debt, are same as provided in Part II and Part III of the First Schedule to the Ordinance. Accordingly, the higher rates of withholding tax for 'Non-Filers' are also the applicable rates of final tax, even if they become filers. Thus, there is no incentive to become a filer.

Recommendation

The rates of final tax should be provided separately in such a way that both for 'Filers' and 'Non-Filers' such rates are same.

Rationale

This will provide incentive for the 'Non-Filers' to become 'Filers' enabling them to claim refund of the excess deduction as 'Non-Filer'.

2.3 TAXATION OF AOP'S OF PROFESSIONALS

The income of association of persons (AOP) of the professionals, which are prohibited from incorporating as a limited company, should not be taxed in hands of the AOP and instead share of each partner / member be taxed in his/her hands equated with salary income or rate applicable for business individuals for the purposes of determining the tax liability.

Recommendation

For this purpose sub-section (2), (3), (4) and (5) of Section 92 and Section 93 of the Ordinance omitted by Finance Act, 2007 should be restored.

Rationale

Professionals like Architects, Accountants, Advocates etc., are not allowed by their respective governing statues to form a limited liability company. Thus, the professionals have no alternative but to join hands in the status of an association of persons (AOP). This brings the AOP of professionals at a disadvantageous position in respect of effective tax rate as compared with a company, since member's salary is not a deductible expenditure, whereas in case of a company, director's remuneration is a deductible expenditure and such remuneration is taxed at rates applicable to a salaried individual.

2.4 INTER CORPORATE DIVIDEND INCOME

At present dividend income is subject to Final Tax at the rate of 12.50% for all categories of persons, including Companies earning such income, and the only exemption is available for payment of dividend to group companies entitled to group taxation under Clause (103A) Part I of the Second Schedule to the Ordinance.

Through Finance Act, 2007, the Government as a first step took a correct measure for excluding Dividend Income from Final Taxation for Companies; which rendered Dividend Income eligible for adjustment against business loss. However, through Finance Act 2013, Dividend Income was again brought under Final Tax Regime for Companies, instead of taking further corrective measure for extending exemption for inter-corporate dividend, across the board.

Recommendation

The taxation of dividend Income under normal tax regime, as applicable for companies prior to Finance Act 2013 should be restored and the scope of exemption provided under Clause (103A) be extended for all resident companies receiving dividend income irrespective of the fact that it is received from group companies or otherwise.

Rationale

Dividend is taxed when it is distributed to the ultimate shareholders of the parent company. This will encourage the companies to invest their surplus funds into the shares of the listed companies which will strengthen our stock markets.

2.5 TAX ON UNDISTRIBUTED RESERVES - SECTIONS 5A AND 8

In order to encourage payment of dividend to the shareholders, a tax on the undistributed 'Reserves' of a public company (excluding Scheduled bank or a Modaraba) has been imposed at the rate of 10% of the undistributed reserves in excess of paid up capital.

For the purpose of this levy, 'Reserves' includes amounts set-aside out of revenue or other surpluses excluding capital reserves, share premium reserves and reserves required to be created under any law, rules or regulations.

Section 4 is the charging section for all sorts of taxes levied under the Ordinance. However, the corresponding amendments in Section 4(4) (a) and 4(5) of the Ordinance have not been made. Consequently although provision for tax on undistributed reserves has been made in the Ordinance, but the chargeability thereof has not been catered for.

The amended Section 8(e), specifically provides for the procedure and mechanism for payment of tax in respect of income subject to separate charge under Sections 5, 5A, 6, 7, 7A or 7B but the procedure and mechanism for payment of tax under Section 5A (tax on undistributed reserves) has not been provided for.

Another important discrepancy or lacuna is in the drafting of this Section as a result of which the undistributed reserves will again be taxed in the subsequent tax years.

Recommendations

- The term 'Reserves' should be defined as 'undistributed profit for the year', in conformity with the judgment reported at 2004 PTD 1135;
- Appropriate amendments be made in sections 4 and 8 of the Ordinance;
- Lacuna is section 5A of the Ordinance, regarding taxation of un-distributed reserves again and again in the following years be removed.

Rationale

- To properly create the charge of tax on un-distributed reserves and to bring clarity as to the mode and manner of payment of tax thereon;
- To avoid taxation of un-distributed reserves again and again.

2.6 PERSONAL TAX CREDIT- SECTION 21(1)

All the progressive tax regimes provide possibilities for tax planning for personal taxation if the same is in line with the overall economic priorities of the government. Such opportunities are provided by way of tax credit for donations to charitable institutions, equity investment and life insurance and profit on debt for construction of house.

Recommendation

Tax Credit for personal expenditure on education of children, rent of residence, medical expenses, health insurance and legal/ professional fees should be introduced with the condition of submission of evidence of payment with full particulars of the payee including National Tax Number.

Rationale

Such a credit is imperative to maintain just and equitable tax action for individuals.

2.7 THRESHOLD FOR CASH PAYMENTS - SECTION 21(l)

Clause (a) of the second proviso to Section 21(l) specifies that cash expenditure exceeding Rs.10,000 is not allowed as tax deductible expenditure.

Recommendation

Threshold of Rs.10,000 was substituted by the Finance Act, 2004 for Rs.5,000 and was enhanced. Keeping in view the inflationary trend, the threshold needs to be enhanced to at least Rs. 25,000.

Rationale

To bring the threshold in accordance with the inflationary trend.

2.8 THRESHOLD FOR SALARY PAID IN CASH - SECTION 21(m)

Under the provisions of Section 21(m) of the Ordinance any salary paid or payable exceeding Rs.15,000 per month other than by a crossed cheque or direct transfer of funds to the employee's bank account are not allowed as tax deductible expenditure.

Recommendation

Threshold of Rs.15,000 is too low considering the inflationary trend and needs to be enhanced to at least 1/12th of basic exemption for salary income (Rs. 400,000). Accordingly, the threshold of Rs. 15,000 as given in Section 21(m) be enhanced to Rs. 35,000.

Rationale

To bring it in accordance with the basic exemption (per month) for salary income.

2.9 DEDUCTIBLE ALLOWANCE FOR PROFIT ON DEBT - SECTION 64A

Currently, tax credit was allowed on profit on debt or share in rental or share in appreciation of value paid in respect of amount borrowed for construction of a new house or acquisition of house from certain specified persons.

By omission of Section 64 and addition of Section 64A, the facility of tax credit is replaced with straight deduction (deductible allowance) of such profit on debt or share in rental or share in appreciation of value paid in respect of amount borrowed for construction of a new house or acquisition of house from certain specified persons from the total income to arrive at the taxable income.

The deductible allowance for such profit on debt or share in rental or share in appreciation of value is lower of the following:

- Amount paid during the year; or
- 50% of the taxable income; or
- Rs. 1,000,000

Recommendations

This Section should be placed under "Deductible Allowances" [Part IX of Chapter III] instead of current placement of "Tax Credits". Further, the threshold of 50% of taxable income should be replaced with 50% of total income.

Rationale

The substitution has been placed incorrectly under "Tax Credits" [Part X of Chapter III of the Ordinance]. It should have been placed under "Deductible Allowances" [Part IX of Chapter III] as Section 60C. Further, the threshold of 50% of taxable income should have been 50% of total income, since taxable income is arrived after deduction of deductible allowances from the total income.

2.10 SET OFF OF LOSSES - SECTION 56

Section 56 was amended through Finance Act, 2013, whereby loss (excluding speculation and capital loss under sections 58 and 59) sustained under any head of income cannot be adjusted against the income under the head 'income from salary' and 'income from property'.

Recommendation

The position prior to amendment made through Finance Act, 2013 should be restored.

Rationale

The logic behind this amendment through Finance Act, 2013 was against the basic concept of taxation of 'Global Income'

2.11 SMALL COMPANY - WITHHOLDING AGENT

The concept of 'Small Company' was introduced in 2005 with reduced tax rate and exemption from being a withholding agent under Section 153 of the Ordinance enabling 'individuals' and 'association of persons' to conduct business in corporate structure and be a part of organized and documented sector.

Later, the exemption from being a withholding agent in case of small company was withdrawn and associations of persons / individual with turnover exceeding fifty million rupees were also made a withholding agent under Section 153.

Recommendation

Small Company to be brought at par with an association of persons and individuals by providing the threshold of turnover of Rs.50 million for the purposes of withholding agent under Section 153.

Rationale

An individual or AOP with turnover up to Rs.50 million should not be in advantageous position as compared with a 'Small Company' having similar turnover.

2.12 FINAL TAXATION

Positive steps have been taken for opting out of final tax regime in respect of sale of goods, execution of contracts, services of stitching, dying, etc. commission or discount of petroleum products, brokerage and commission, import and export of goods, subject to certain conditions, which is highly appreciated. Similar positive steps are recommended for other sources of income currently covered under final tax regime.

Recommendations

- Corporate sector (except for income from exports) should be excluded from final tax regime unconditionally. (Alternatively, the corporate sector be excluded from the final tax regime and subjected to minimum tax with the facility to carry forward the difference of actual tax liability and minimum tax for adjustment against normal tax liability of the subsequent 5 years.

- The rate of minimum tax for opting out of final tax regime for Import of goods and Export of goods is currently at par with the rate of final tax, which does not give any incentive to opt out of final tax regime. This needs to be reduced by at least one percent.

Rationale

There is unanimity of the view that policy framework for Final Taxation Regime was in principle, introduced to cater for certain negative aspects of Pakistani tax culture. Final Taxation Regime that was introduced in 1990 as Presumptive Tax Regime, needs a serious policy review for a sustainable growth in tax base. Nevertheless, this was not a sustainable model. It was a 'stop-gap' arrangement. There was a need to incorporate and institute provisions which would check aforesaid abuses. Over a period of more than two decades concrete measures have not been adopted to curb the abuses that led to introduction of PTR. Accordingly, PTR has continued and in certain cases it is being promoted.

Withholding taxation with normal taxation necessarily requires refund, if the tax liability determined on net income basis is less than tax withheld. There were serious abuses of

refund provisions. Accordingly, checks to that effect were introduced by way of PTR.

An effective tax system can only work where there are identical tax procedures and processes are consistent for similar nature of business activities. There should be no discrimination in incidence by one sector over the other. FTR has disturbed both these aspects. There is a need to review FTR in that context.

2.13 TAX ON CAPITAL GAINS (SECURITIES) OF NON-RESIDENT

There is a need to rationalize the regime for taxability of capital gains in case of a non-resident person.

Recommendation

In case of a non-resident, tax on capital gain should be calculated after allowing indexation for devaluation of Pakistani Rupee, if any.

Rationale

Therefore tax on capital gain should be calculated after allowing indexation for devaluation of Pakistani Rupee, if any.

Similar treatment is also provided in Section 48 'Mode of computation' of Indian Income Tax Act 1961, as follows:

"The Income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:
expenditure incurred wholly and exclusively in connection with such transfer; the cost of acquisition of the asset and the cost of any improvement thereto:

Provided that in the case of an assessee, who is a non-resident, capital gains arising from the Transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so however, that the aforesaid manner of computation of capital gains shall be application in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company........"

2.14 APPELLATE FORUMS

It is felt that the principles of justice are not met at the first level of appeal [Commissioner – Appeal].

Recommendation

Commissioner - Appeals should be brought under the administrative control of Federal Ministry of Law and the Appellate Tribunal under the control of the High Court of the

respective jurisdiction and establishment of Tax courts against the decision of ATIR to avail speedy process of justice with the learned judges of High Court being member of Tax Courts

Rationale

These steps are necessary to improve the confidence of the taxpayer on the taxation system in Pakistan

2.15 APPOINTMENT OF THE APPELLATE TRIBUNAL - SECTION 130 (4)

Through Finance Act, 2013 the scope of appointment of Judicial Member of the Appellate Tribunal was enlarged by providing for appointment of an officer of Inland Revenue in BS-20 or above who is Law Graduate as well. This would imply that now both Accountant Member and a Judicial Member can be appointed by FBR.

Recommendation

The amendment made through Finance Act, 2013 in Section 130(3)(c) allowing a departmental officer to become judicial member should be withdrawn. Further, a condition be placed on the Officer of Inland Revenue to be appointed as Member that such person will not be transferred back to the department of Inland Revenue.

Rationale

It is important to observe that the accountant members of the Appellate Tribunal are mainly officers of Inland Revenue Service and generally are biased and it is the judicial member from the judiciary whose presence is generally perceived for dispensation of justice. With the appointment of judicial members from amongst the officers of Inland Revenue this balance in dispensation of justice will be compromised. Further, in order to keep independence of Judicial System, the appointment of members should be of permanent nature and they should not have any encouragement to work for Inland Revenue in future.

2.16 INCENTIVES TO EVADE TAXES - SECTION 111 (4)(a)

The above mentioned sub-section though promotes inflow of foreign exchange remittances towards the country; however, the same provision is being largely misused to incorporate the untaxed income. Moreover, the provision is also refraining persons from being enrolled/ included in the tax net and making true and fair declaration of income. It will be appreciated that why would someone like to pay tax at the rate of 30% to 35%, when this permanent route of amnesty is available at a nominal cost of around 3% to 4%.

Recommendation

Section 111(4)(a) of the Ordinance should be abolished; or alternatively the applicability of Section 111(4)(a) should be made conditional i.e., remittances by an overseas non-resident Pakistani to a relative as defined in Section 85(5) without any threshold. However,

remittances by others may be subjected to tax scrutiny if it exceeds the limit prescribed by the State Bank of Pakistan which is currently $10,000. Alternatively, until this provision is abolished, this kind of remittance should be restricted solely for the purpose of investment in industrial undertaking in Pakistan.

Rationale

Whitening the untaxed money is abusing various provisions of the law such as 'inward foreign remittance' By virtue of clause (a) of sub-section (4) of Section 111 of the Ordinance a taxpayer does not have to offer explanation about the nature and source of any amount of foreign exchange remitted from outside Pakistan through normal banking channels. Improvement of tax base essentially requires abolition of any discrimination between taxpayer with adequate penalties for the delinquents but in Pakistan the situation is to the contrary. Further, restricting these kind remittances for the purpose of investment in industrial undertaking in Pakistan will provide job opportunities and increase in economic activities in Pakistan.

2.17 AMNESTY SCHEMES

Out of the turn announcement of tax amnesty schemes really erodes the spirit of the taxpayers who are duly complying the Tax laws and paying taxes on the single penny they earn in any tax year.

Recommendation

No such schemes should be announced in the future.

Rationale

These policies encourage the unorganized sector to continue with the present setup. In this situation, the documented and organized sector suffers both in financial terms as well as culturally for the reason that such measures reflect a sign that system will continue to prevail and there is no need for a positive shift.

Such schemes provide complete amnesty for all defaulted liabilities on payment of a very nominal sum. In the case of indirect taxes, there are almost regular amnesty schemes for delinquents. This places the taxpayer community in an embarrassing position.

2.18 EXPORT OF SERVICES

Currently, only Information Technology related services are recognized by providing exemption of income from export of such services. However, there are number of other services in particular professional services by Architects, Engineers, Accountants, etc. which also needs to be recognized for promoting export of such services.

Recommendation

- To promote, encourage and incentivize export of services, it is proposed that income from export of all types of services should be exempted like IT enabled services;

- Alternatively, export of services be subject to reduced rate of tax as in case of export of goods;

- The exemption to IT sector provided under clause 133 of Part I of Second schedule to the Ordinance should be extended up to 30th day of June 2021.

Rationale

Exports whether of goods or services are the back bone of any economy. Pakistan is no exception to this fact and our policy thrust is to enhance the exports to its optimum levels.

Export of goods and export of services are for all practical purposes more or less the same. In both cases all the related activities of producing the goods and generating of services originate from Pakistan and earn valuable foreign exchange for the country.

2.19 CALCULATION OF DEPLETION ALLOWANCE – FIFTH SCHEDULE

Under Article 3 of Part I of the Fifth Schedule to the Ordinance, oil and gas exploration and production companies are entitled to claim depletion allowance @ 15% of the "gross receipts representing the wellhead value of production" provided that such allowance shall not exceed 50% of the profit and gains of such undertaking before deduction of such allowance.

However, for past few years, tax authorities have started disputing the calculation of depletion allowance. The tax authorities are of the view that depletion allowance shall be calculated at wellhead values after deduction of royalty, which is incorrect as wellhead value includes royalty.

Recommendation

It is suggested that necessary clarification needs to be added under Rule 3 of Part I of the Fifth Schedule to the Ordinance in order to resolve the long outstanding dispute between the parties.

Rationale

Clarification will remove the undue harassment of taxpayers and settle the long outstanding issues.

2.20 EXEMPTION OF INCOME RECEIVED FROM ANNUITY

Pension received by an employee from its employer is exempt under clauses (8), (9) and (12) of the Part-I of the Second Schedule to the Ordinance. However, income received from an annuity, which is a kind of pension benefit remains chargeable to tax, except for annuity received from approved superannuation fund under Clause (25). Logically, like pension, income received from an annuity should also be exempt from tax.

Exemption of income received from annuity or annuities issued by Life Insurance Companies registered under Section 3 of the Insurance Ordinance were available through

clause (21) of Part-I of second Schedule to the Ordinance which was withdrawn by Finance Act, 2008.

Recommendation

Income received from annuity up to Rs. 120,000 per annum after 60 years of age should be exempted from tax.

Rationale

To safe guard the interest of senior citizens after reaching the retirement age.

2.21 CONDONING OF TIME LIMIT BY THE BOARD - SECTION 214A

The Federal Board of Revenue (FBR) is empowered to condone the time or period specified under any of the provisions of the Ordinance or rules made there-under within which any application is to be made or any act or thing is to be done, in any case or class of cases and permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate. The scope of exemption was extended by introducing an explanation in Section 214A vide Finance Act, 2012 by way of which the scope to grant condonation was extended to cover the defaults of the officials of Inland Revenue for non-fulfillment of their official duties within the prescribed time.

Recommendation

The provisions of Section 214A, prior to amendment made through Finance Act, 2012, implied that this power cannot be used in a manner detrimental to a taxpayer. However, by virtue of the amendment made through Finance Act, 2012 it has been specifically provided that this power to condone the time or period of an act or thing to be done by any of the Income Tax Authorities can also condoned. Amendments made in Section 214A through Finance Act, 2012 should be withdrawn.

Rationale

This amendment is highly prejudicial to the interest of taxpayers and indirectly gives a blanket power to the FBR to override the statutory time limit or period of any act or thing to be done by the Income Tax Authorities.

This has already been provided under clause (72B) of Part IV 2nd Schedule read with SRO 717(I)/2014 dated 7 August 2014.

2.22 CERTIFICATE OF EXEMPTION - SECTION 148(7)

Currently, certificate of exemption from withholding tax on imports u/s 148 is not allowed to persons who are importing raw material, plant, machinery, equipment and parts for its own use unless they qualify as industrial undertaking. The tax paid at import stage on such imports by persons other than the industrial undertaking is treated as a final tax.

Recommendation

With corresponding changes in (72B) of Part IV 2nd Schedule and SRO 717(I)/2014 dated 7 August 2014, Clause (a) of sub-section (7) of Section 148 should be amended as under:

> *(a) raw material, plant, machinery, equipment, parts or any other goods by any person for its own use.*

Rationale

Whilst the provisions of Section 148(7) is abundantly clear that the tax required to be collected under Section 148 shall be a final tax on the income of the importer arising from the imports subject to sub-section (1). The Commissioners have been treating the tax collection from all the imports meant for own use as a final tax, which is exactly opposite of the express provision and spirit of sub-section (7). The amendment is necessary to target the tax collected u/s 148(1) as final tax on the income of any person arising from the imports which are meant for sale, i.e. commercial imports.

2.23 TIMING OF BUDGET

The Budget is normally announced in mid-June each year and after it is passed by National Assembly, the amendments in law become effective from July 1 immediately. This does not provide adequate time to the taxpayers to amend its systems and operations to cater to the changes e.g. withholding tax regime etc. which in most of the entities is automated and system based. In some cases foreign vendor has to be engaged for making changes in the technology system operating in the entity.

Recommendation

The Budget may be presented in April/ May so that taxpayer as well as FBR is provided a reasonable time (at least 4 to 6 weeks) for implementing the budgetary changes.

Rationale

This will provide adequate time to the taxpayers to amend its systems and operations to cater to the changes in withholding tax regime etc. This hardship is not only faced by the taxpayers but also by FBR at PRAL where, to implement the budgetary changes FBR has to extend the date of filing of sales tax and income tax returns.

2.24 COMPENSATION AGAINST TAX DEMAND PAYMENTS - SECTION 137(2)

The taxpayer is required to deposit tax demand within 30 days of the service of the assessment order. In case, additions made by the assessing officer are deleted in appeals, the taxpayer is not provided any compensation.

Recommendation

The taxpayer be allowed a compensation for disputed tax demand recovered and later deleted in appeals. A third proviso in sub-section (2) of Section 137 may be inserted to provide compensation.

Rationale

This will bring fairness in the process of collection and payment of tax system and will also enforce a check on the FBR field force who make unnecessary additions / disallowance just for meeting their targets.

2.25 WITHHOLDING TAX EXEMPTIONS FOR NON-PROFIT ORGANIZATIONS

The total incomes of Provident funds, gratuity funds or other similar funds, unit trusts, universities and certain other institutions like Employees' Old Age Benefit Institution and International Finance Corporation etc. are generally not liable to pay tax under Section 100C and under various clauses of Part I, Second Schedule to the Ordinance. However, these institutions are not exempt from withholding of tax as recipient under the Ordinance.

Recommendation

By inserting proposed exclusions in Section 100 B (2) would not gain any withholding tax exemptions to such taxpayer whose income is already exempt under Section 100C and under various clauses of Part I, Second Schedule to the Ordinance.

The condition for obtaining exemption certificate under Section 159(2) should be relaxed for such institutions as their income is already exempt under Section 100C and under various clauses of Part I of Second Schedule to the Ordinance.

Rationale

To avoid complexities for taxpayers and to extend real benefits of exemptions.

2.26 REVIVAL OF ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Under Section 134A of the Income Tax Ordinance 2001 scope of Alternative Dispute Resolution Committee (ADRC) has been restricted. The mechanism is now restricted to issues on facts only. Moreover, resolution under Alternative Dispute Resolution is not used as precedent. Further, under the existing provisions the decision of the ADRC is subject to an overriding approval of the Federal Board of Revenue. The experience suggests that in most of the cases where the recommendations are towards relief to the taxpayers, the FBR does not ratify the decision of the committee. ADRC mechanism should be used to resolve all taxpayers' matters without any restriction.

Recommendation

The decision of ADRC should be made binding on FBR, and only in case of serious

reservations, FBR may be empowered to appoint another Committee to review the decision of the previous ADRC.

Rationale

To curb the ever increasing and never ending litigation and disputes between taxpayers and tax department.

To settle tax disputes out of court in a way to improve the government inflows and to curb litigation cases due to which tax demands worth billions of rupees is stuck up since long.

Further that members of the ADRC who spend their valuable time and energy in finding amicable resolution of the disputes involved feel disgruntled and are not motivated in becoming part of ADRC committees.

2.27 PAYMENTS FOR GOODS, SERVICES AND CONTRACTS (ADVANCE TAX DEDUCTION) - SECTION 153(3)

Tax deducted under Section 153 from rendering of or providing of services was minimum tax for any person including a company. Due to bad drafting of amendments made in Section 153(3) from time to time a dispute arose as to whether such tax is minimum tax for a company as well or not. This issue also came up before the Honorable Federal Tax Ombudsman and implementation of his order is pending.

In order to resolve this issue clause (79) of Part IV of Second Schedule was inserted through a notification dated October 31, 2011 granting exemption from minimum tax on rendering of or providing of services by a company. This by default was applicable from October 31, 2011 onwards. On the other hand the issue whether tax deducted from services is minimum tax for companies since July 01, 2008 to October 30, 2011 was in dispute between the FBR and Federal Tax Ombudsman.

In the Finance Bill 2015, **as originally introduce in the Parliament**, it was proposed to kill the judgment of the Honorable Federal Tax Ombudsman by amending Section 153(3) retrospectively from tax year 2009 to provide exemption to the companies from the applicability of minimum tax on rendering of or providing of services and omitting clause (79) of Part IV of Second Schedule to the Ordinance.

The Finance Act, 2015, as finally approved by the Parliament, the amendment in Section 153(3) has been withdrawn but the omission of clause (79) of Part IV of Second Schedule remains intact.

Thus from July 01, 2015 the companies who are filers were liable to pay minimum tax on the revenue from services rendered or provided to persons who are withholding agents under Section 153 @ 8% of the revenue and in case of non-filer companies the rate of minimum tax is 12%. This effectively means the minimum margin of net taxable income to the revenue of 25% for filers and 37.50% for non-filers, which in case of certain service provider companies will be a big burden on their tax bill.

Through Finance Act, 2014, contracts executed by sports person, though a contract for

services, were brought under Execution of Contracts by fiction of law and the receipts against such contract were put in the ambit of final tax at the rate of 10% (effective tax year 2015).

Now the sports person have been further benefited by making the applicability of receipts of sports person chargeable to tax as final tax at the rate of 10% retrospectively from tax year 2013.

On the other hand for non-filers the rates were increased to 12% and 15% through SRO 136(I)/2015 dated February 13, 2015 and Finance Act, 2015.

During the year an amendment was introduced whereby substantial concessions were extended to certain specified service providers, which is a clear discrimination with others.

Recommendation

Service providers should be exempted from minimum tax regime and brought back to normal tax regime.

Rational

Most of the service providers work with nominal profit margins.

2.28 EXPORTS (ADVANCE TAX DEDUCTION) - SECTION 154(5)

Exports of goods, foreign indenting commission and sale of goods to an exporter under an inland back-to-back letter of credit and export of goods from Export Processing Zone are subject to deduction of tax at source, which is also the final tax.

The exporters and foreign indenting commission agents have been given an option for exclusion from final tax regime, retrospectively from tax year 2015, subject to the following conditions:

- submission of option at the time of furnishing of return of income; and
- tax deducted shall be the minimum tax.

Recommendation

The provision inserted vide Finance Act, 2015 as sub Section 5 of Section 154 should be omitted.

Rationale

If the tax deducted is minimum tax why someone would opt for exclusion from final tax regime.

2.29 IMPACT OF TAX CREDITS ON EXPORTERS - SECTIONS 65B, 65D AND 65E

Exporters are not able to practically reap the benefits of tax credits available under sections

65B, 65D and 65E owing to withholding tax at 1% and no specific provisions regarding exemption or reduced rate certificate is available. This leads to refunds and blocks the funds, creating cash flow problems.

Recommendation

Following be inserted as sub-section 5 to Section 154 in order to avoid problems being faced by exporters:

> *"The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such inquiry as the Commissioner thinks fit, may allow in cases where sufficient tax credits under sections 65B, 65D and 65E are available to absorb the tax deductible under sub-section (1), by an order in writing, any person to make the payment without deduction of tax."*

Rationale

Facilitating Exporters to reduce the unnecessary working capital requirements. This will result in increased Exports, Foreign Exchange Reserves and pace of Industrial growth.

The proposed amendment is in line with the intention behind introduction of tax credits under sections 65B, 65D and 65E against final tax as well in order to promote industrialization.

Deduction of taxes at standard tax rate of 1% in spite of tax credits under sections 65B, 65D and 65E results in piling up of substantial refunds and unnecessary financial cost for the Exporters.

2.30 TIME OF DEDUCTION OF TAX - SECTION 158

Tax is to be deducted at source, under various provisions of the Ordinance, at the time the amount is paid. For this purpose Section 158 explains the scope of the term "paid". In case of tax to be deducted from profit on debt it is earlier of amount paid or credited to the account and in all other cases at the time the amount is actually paid.

A new clause has been added to empower the Board to prescribe the meaning of the "amount actually paid".

Recommendation

The amendment is to be placed as new sub-section instead of clause (c) of Section 158.

Rationale

The amendment has been in-appropriately placed as clause (c) instead of new sub-section.

2.31 TIME PERIOD - SECTION 65B, 65D AND 65E

Time limit for purchase and installation of Plant and Machinery under Section 65B & 65E;

and incorporation of Company and setting up of industrial undertaking under Section 65D is going to expire on June 30, 2016.

Recommendation

Time limit should be extended for further period of at least 5 years.

Rationale

The proposed change is in line with the Government's overall growth objectives and to provide opportunities for investment linked with tax incentives.

2.32 TAX CREDIT - SECTION 65E

Tax Credit under Section 65E is restricted to investment in Plant and Machinery.

Recommendation

Tax credit under Section 65E should also be extended to investment in factory building and manufacturing related infrastructure.

Rationale

Expansion of plant or undertaking a new project involves investment in factory building and manufacturing related infrastructure and as such these types of investments should also be made eligible for tax relief.

2.33 ADJUSTMENT OF BROUGHT FORWARD LOSSES CONSEQUENT TO AMALGAMATION

As per Section 57A, the assessed loss, other than brought forward and capital losses, of the amalgamating company is allowed to be set off against income of the amalgamated company, and vice versa.

Recommendation

Brought forward as well as capital losses of amalgamating Banking companies is allowed to be adjusted against the income of the amalgamated banking company. We suggest that similar adjustment of brought forward losses should also be allowed for other companies.

Rationale

To promote investment in order to revive sick industries.

2.34 WORKERS' WELFARE FUND (WWF)

Presently, WWF is also payable on dividend, being part of accounting profit, despite discharge of the related WWF liability dividend paying company on its own accounting profit or taxable income.

Recommendation

To avoid duplication of WWF on income already subjected to WWF, we suggest that dividend received should be excluded from the purview of WWF.

Rationale

To avoid duplication of WWF on same income.

2.35 DEDUCTIBLE ALLOWANCE FOR WWF - SECTION 60A

A person is entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971 (XXXVI of 1971).

After 18th Constitutional amendment matters relating to "welfare of labour; conditions of labour; provident funds; employer's liability and workmen's compensation health insurance including invalidity pensions, old age pensions" are provincial subjects as mentioned at serial No. 26 of concurrent legislative list at Part-II of 4th Schedule to the Constitution of Islamic Republic of Pakistan. Consequently Sindh WWF Act has been enacted.

Recommendation

Amendment in Income Tax Law is required to take into account Provincial WWF levy.

Rationale

To facilitate the taxpayers.

2.36 NON-RECOGNITION RULES - SECTION 79

Under sub-section (1), no gain or loss is taken to have arisen on the disposal of an asset, inter alia, by reason of a gift of an asset, on the transmission of an asset on the death of a person, or on the parting of an asset by a company or an AOP to its shareholders or members on liquidation of the company or on dissolution of the AOP. However the concession of such transfers not being treated as a taxable event is not available, where the person acquiring the asset is a non-resident person at the time of the acquisition [sub-section (2)].

There appears to be no reason for treating the gain or loss on disposal of assets in the situations mentioned in sub-section (1) as a taxable event simply for the reason that the transferee is a non-resident.

Recommendation

Sub-section (2) of Section 79 be deleted.

Rationale

This provision could cause genuine hardship in cases of gifts by a person or transmission of assets on the death of a person, to the person's non-resident family members. In the case of distribution of assets to non-resident shareholders or non-resident members of an AOP on liquidation of the company or dissolution of the AOP, the gain would be taxable in the hands of the liquidated company or the AOP. The law is illogical since it is not the non-resident transferee of the asset that is being affected but the resident transferor.

2.37 ISLAMIC MODES OF FINANCING - RULE (3) OF 7TH SCHEDULE

Following are the issues pertaining to treatment of Islamic Financing for tax purposes which need to be addressed:

ISSUE 1

Although Rule 3 of 7th Schedule of the Ordinance allows tax neutral treatment to Islamic banking Institutions, the explicit tax neutrality is not provided to customers availing Islamic banking services.

Recommendation

The following sub-section (1A) is proposed to be introduced in Section 32 "Method of Accounting" of the Ordinance:

For the removal of doubt it is declared that the financing availed by the customers of Islamic Financial Institution(s) licensed by State Bank of Pakistan (SBP) or Securities and Exchange Commission of Pakistan (SECP), as the case may be, under any Islamic modes of financing shall be treated at par with the financing obtained from conventional financial institutions for the purpose of computation of income tax liability under this Ordinance. This explanation shall be deemed to always have been so enacted and shall have had effect accordingly.

Rationale

To provide tax neutrality treatment to customers of Islamic financial Institutions availing Islamic financial services under different modes of Islamic financing.

ISSUE 2

The objective of Rule 3 of 7th Schedule was to provide tax neutral treatment to IBIs, however, it is difficult to meet the condition of Sub-Rule (2) of Rule 3, keeping in view the diversified nature of Islamic banking transactions and equating each transaction to a conventional equivalence and then getting it certified by the auditor which is time consuming and costly for Islamic Banking Institutions (IBI).

Recommendation

Following explanation is proposed to be introduced after Rule 3(2) of Seventh Schedule to the Ordinance:

Explanation: For the removal of doubt it is clarified that the statement referred in sub-rule (2) shall be required for income or expense relating to those transactions of Islamic mode of financing, which does not form part of income disclosed in the annual accounts furnished to the State Bank of Pakistan either for the year or for any subsequent or preceding year. This explanation shall be deemed to always have been so enacted and shall have had effect accordingly.

Rationale

To reduce unnecessary compliance for Islamic banks.

ISSUE 3

Currently, tax authorities consider Ijarah financing (lease) just like finance lease and do not allow deduction in respect of depreciation of assets financed under Ijarah to Islamic financial institutions under sub-rule (a) of Rule 1 of the 7th Schedule of the Ordinance. Such treatment will make Ijarah financing unviable for Islamic banks as well as those of Islamic banking operations of conventional banks.

Whereas, Ijarah financing structure is entirely different from conventional finance lease as explained below:

As per International Accounting Standard No. 17 'finance lease is a form of financing that transfers substantially all the risks and rewards incidental to ownership over a leased asset from the lessor to the lessee'.

As per Shariah principles, in Ijarah financing the ownership will remain with the lessor and only usufruct of the asset will be transferred to the lessee for an agreed period for an agreed consideration. In other words, the all risks related to ownership will remain with the lessor and shall not be transferred to the lessee. Therefore, Ijarah financing concept is more close to operating lease rather than finance lease.

Recommendation

In order to resolve the above issue, an amendment is proposed to be inserted in the end of sub-rule (a) of Rule 1 of the 7th Schedule of the Ordinance, following explanation may be added after sub-rule (a) of Rule 1 of the 7Th schedule to the Ordinance;

Explanation: For the removal of doubt it is clarified that assets given on ijara shall not be considered as assets given on finance lease for the purpose of this sub-rule.

"This explanation shall be deemed to always have been so enacted and shall have had effect accordingly."

Rationale

To allow level playing field to Islamic banks engaged in financing of assets through Ijara

2.38 ADVANCE TAX REGIME FOR BANKS - RULE 5 (1A) 7TH OF SCHEDULE & SECTION 147(6)

As per SRO 561(I)/2012, the provisions of 7th Schedule relating to the advance tax were amended. Consequently the provisions of Section 147(6) relating to filing of lower estimate are no more applicable for banks even if the bank estimates that its tax payable for the relevant tax year is lower than the amount of advance income tax payable.

Recommendation

Amendments in Rule 5(1) related to own estimate and sub-rule (1A) should be deleted. This will restore the provision of Advance Income Tax as originally contained in Rule 5 of Seventh Schedule.

Rationale

The changes in the Seventh Schedule by virtue of SRO 561 has resulted in banks ending up paying more advance tax as compared to its tax liability which is discriminatory as compared to other sectors and results in accumulation of tax refunds which become a problem both for the banks and revenue authorities.

2.39 INCREMENT IN ALLOWANCE FOR BAD DEBTS - RULE 1(C) OF 7TH SCHEDULE

The existing threshold of 1% of Total Advances (other than Consumer/ SME) should be increased to a reasonable level i.e. 2% for corporate and other advances as tax deductible 'provision for bad debts' for the year.

Recommendation

Rule 1 (c) should be amended accordingly.

Rationale

The restriction on claim of provision for bad debt at 1% is too low considering the quantum of advances in very material in corporate sector.

2.40 EXEMPTION OF MINIMUM TAX AS MENTIONED IN CLAUSE 11 A (XVI) OF PART IV OF 2ND SCHEDULE - SECTION 113

A Morabaha bank or a financial institution approved by the State Bank of Pakistan (SBP) or the Securities and Exchange Commission of Pakistan (SECP), as the case may be, for the purpose of Islamic Banking and Finance in respect of turnover under a Morabaha arrangement, is extended exemption from minimum tax levied under Section 113.

Recommendation

The exemption should specifically be included in 7th schedule and should be applicable to all Islamic mode of financing.

Rationale

In order to promote Islamic Banking, gross receipts on account of Islamic financing arrangement entered into by banking company with its customers shall not be considered as 'turnover' for the purposes of computing minimum tax under Section 113 of the Ordinance.

2.41 RATE OF CORPORATE TAX FOR BANKS – FIRST SCHEDULE

Corporate tax rate has been reduced from 35% to 32% for companies and is projected to be reduced by 1% each year to reach 30%. However, this consideration has not been extended to banking companies.

Recommendation

Same provisions should be made applicable to Banks.

Rationale

This is a discriminatory treatment.

2.42 FOREIGN TAX CREDIT - SECTION 103(7)

A credit is allowed under Section 103(7) only if the foreign income tax is paid within two years after the end of the tax year in which the foreign income to which the tax relates was derived by the resident taxpayer.

Recommendation

The said sub-section should be omitted

Rationale

Where a taxpayer adopts accrual basis of accounting, the foreign source income is offered to tax in the year in which it becomes due. However, receipt of the income in some cases is extra-ordinary delayed beyond the time period of two years on account of the political issues with the remitting country (e.g. Bangladesh). The taxpayer in this case is unable to claim foreign tax credit (usually withheld by the remitting country in the year of payment) on the income already taxed two years ago.

2.43 DIRECTOR GENERAL INTELLIGENCE & INVESTIGATION SECTIONS 208 & 230, SRO 115(I)/2015

The appointment and powers of Director General Intelligence & Investigation (IR), as a parallel tax authority is creating issues.

Recommendation

The law should be amended so that the authority of Director General Intelligence and

Investigation is exercised only when all other options have been exhausted.

Rationale

The creation of parallel authorities for the purpose of sections 174, 175, 176 is causing problems to the taxpayers.

2.44 DEPRECIABLE COST - SECTION 22(13) (A)

The maximum depreciable cost of vehicle currently is Rs.2.5 million, irrespective of the actual cost of vehicle.

Recommendation

The depreciable cost of vehicle should be increased to Rs.5 million.

Rationale

Due to increase of cost of vehicles.

DOCUMENTATION, RESOURCE MOBILIZATION AND BROADENING OF TAX BASE

3.1 AVAILABILITY OF INFORMATION ON WEB PORTAL

Currently information relating to goods declaration and tax deposited are not available on FBR web portal.

Recommendation

It is recommended that information regarding Goods Declaration (GD) and tax deposited in government treasury should be available on web portal with CPR numbers, of both tax withholding agent and for the person whose tax is withheld and deposited. Further, Exemption certificate u/s 148, 152 & 153 should be available online on FBR website for the convenience of withholding agents.

Rationale

This will significantly reduce efforts and time wastage to collect and produce tax challans/ certificates to the tax officers. Also this will facilitate in making compliance to the tax notices especially notices u/s 161 or under any other provision of income tax law, the evidence would be readily available.

3.2 CAPITAL GAIN TAX – SECTION 37A (5)

NCCPL has been entrusted to collect capital gain tax (CGT) by virtue of the amendment through Finance (Amendment) Ordinance, 2012. However, investors of Mutual Funds are currently excluded from the scope of CGT regime and their capital gain tax is deducted by respective Asset Management Company (AMC).

Accordingly CGT of an investor dealing in mutual funds of various AMCs, capital loss in any mutual fund of AMC cannot be set off against capital gain of any mutual fund of other AMC.

Similarly, capital gain / loss in any mutual fund of AMC are not currently being set off against capital gain / loss on disposal of listed securities for the determination and computation of CGT.

Recommendations

It is proposed to extend the scope of CGT regime to the investors of mutual fund with few modifications to the existing regime in the following manner:

- Currently, for the purpose of computation and determination of CGT in listed securities, NCCPL obtains requisite information from Stock Exchanges and CDC and tax thereon is collected by NCCPL in accordance with the Income tax Ordinance and Rules. However, for the purpose of computation and determination of CGT for units of mutual funds,

respective AMC deducts CGT on redemption of units. It has been proposed that the same practice should be continued, however, information related to capital gain / loss should be disseminated and CGT deducted by AMCs should be deposited to NCCPL instead of FBR.

- Accordingly, capital gain/(loss) of each investor as determined by NCCPL on disposal of listed securities should be set off against capital gain / (loss) of an investor as deducted and disseminated by respective AMCs so as to arrive at net tax obligation of an investor.

Rationale

Following benefits are expected:

i. Capital loss of investors in any mutual fund of AMC during any financial year shall be set off against capital gain of any mutual fund of same and/or other AMC in that financial year for the determination and computation of CGT.

ii. CGT collected in a month can be adjusted with the capital loss of investors from CGT accruing next month during the financial year. Accordingly, collected amount of CGT shall be refunded to investors in proportionate to their capital loss of that month of the same financial year.

iii. This will help Government broadening of tax base and centralized documentation.

Government revenues will be amplified due to increase in tax collections from SMEs and increase in listings and trading volumes will flourish capital markets which ultimately results in higher capital gain tax collections as more investors will be attracted towards capital markets.

3.3 WITHHOLDING TAX ON INDUSTRIAL AND COMMERCIAL CONSUMERS

Industrial and commercial consumers of natural gas

Currently, natural gas consumption by CNG Stations only is subject to withholding tax @ of 4% under Section 234A of the Ordinance. A large number of industrial and commercial consumers of natural gas are not paying any tax or paying a small amount as compared to the volume of business on the basis of their consumption of natural gas. It will be appropriate to bring this sector of economy to contribute to the national exchequer by way of a withholding tax.

Commercial consumers of electricity

The current rate of withholding tax on electricity consumption under Section 235 of the Ordinance by commercial consumers on bill amount up to Rs.20,000 per month ranges from Rs. 80 to Rs. 1,500 whereas for bill amount exceeding Rs.20,000 it is 10%. This needs to be increased and rationalized for the reasons stated above.

At present a very large number of taxpayers comprising of small and medium sized industries and the entire wholesale and retail chains are not contributing to the tax revenue in the ratio of their contribution to the GDP.

Recommendations

- Withholding tax at the rate of at least 5% and 10% on natural gas consumption by industrial and commercial consumers respectively should be introduced.
- The rate of withholding tax on electricity consumption by commercial consumers should be fixed at a flat rate of 5% of electricity consumption and for industrial consumer consumers at 10%.

Rationale

The withholding tax regime has been very effective in increasing the tax base in the country. The existing scheme covers almost all the segments of the economy.

3.4 GRANT OF STAY BY COMMISSIONER (APPEALS) - SECTION 128(1A)

The inherent power of Commissioner (Appeals) to grant stay against recovery of tax in hardship cases (where an appeal is pending before him/her) has been given a legal cover and regulated by insertion of Sections 128(1A) and 128(1AA) by Finance Act, 2012 and 2015 respectively. Now, the aggregate period of stay that can be granted is for 60 days only.

Recommendation

In Section 128(1A), the period of "thirty days" should be substituted with "till the decision of the appeal" by deleting 128(1AA) of the Ordinance.

Rationale

Commissioner Appeal is empowered to grant stay only in such cases, where he considers that recovery of tax shall cause undue hardship to the taxpayer. Further, such stay is granted only after hearing the taxpayer and the tax officials and in such cases where he considers that taxpayer prima facie has a good case. In such cases, limiting the period of stay for 60 days is not justified and it is required to be enhanced till the issuance of appellate order.

3.5 POWER TO SET ASIDE - SECTION 129

Up to the year 2005 the Commissioner (Appeals) had the power to set-aside orders framed by the assessing offices

Recommendation

The power to set-aside the appeal with specific directions should be re-incorporated in the law.

Rationale

It has been observed that to give relief, the Commissioner (Appeals) may require examination of evidence. However due to paucity of time and the capacity of staff normally available with the Commissioner (Appeals), it is practically difficult for the Commissioner (Appeals) to decide the matter.

3.6 RATE OF TAX ON SERVICES & CONTRACTUAL SERVICES - SECTION 153

Currently, it is not easy to differentiate between services and contractual services and confusion always exist, which is an area of concern for the tax payers and withholding agents.

Recommendation

It is proposed that either same withholding tax rate should be applied for both the activities or the scope of contractual services be clearly defined in the law. Particularly, in the case of labor contractors, actual salaries & wages are being reimbursed while income of service provider is limited to commission payment/ service charges.

Rationale

Probability of wrong application of law will be minimized.

REMOVAL OF HARDSHIPS

4.1 ALTERNATIVE CORPORATE TAX (ACT) - SECTION 113C

Alternative Corporate Tax (ACT) under Section 113C is being applied on companies without providing opportunity to avail benefits of Third Schedule of Ordinance and available Tax losses. Further, Section 113 C (11) provides that " The Commissioner may make adjustments and proceed to compute accounting income as per historical accounting pattern after providing opportunity of being heard" Income Tax law established a well-defined turnover based mechanism of minimum tax liability for companies that do not have taxable income due to available tax losses / un-absorbed depreciation.

Recommendations

Alterative Corporate Taxation (ACT) introduced through Finance ACT 2014 should be rescinded or its calculation mechanism may be amended as follows:

i. Power to make adjustments to compute accounting income should not rest with Commissioner and accounting income as reported in the audited financial statements of the organization which are prepared in accordance with IFRS and Companies Ordinance shall be considered final.

ii. ACT should be made applicable on the Companies after two years of date of incorporation or start of commercial production, whichever is later.

Rationale

Withdrawal of ACT would provide cash flow relief to the companies having available tax losses.

4.2 PERQUISITES - SECTION 13(7) AND EXEMPTION OF PERQUISITES - CLAUSE (53A) OF PART I OF SECOND SCHEDULE

Currently the loans obtained from the employer below Benchmark rate is subject to tax.

Recommendations

The taxation of marginal income on loans obtained from the employer below Benchmark rate should be exempted by deleting sub-section (7) of Section 13. Alternatively the minimum threshold of the loan amount on which the provisions of Section 13(7) would not be attracted should be raised to at least Rs.2,500,000 from the existing limit of Rs.500,000.

Alternatively at least the mortgage loans be exempted from the operation of Section 13(7) of the Ordinance.

Rationale

This is not a significant source of revenue for the Government on the one hand and very rigid piece of legislation on the salaried taxpayer on the other hand who are hard hit by the present economic situation. The taxation of this notional income is highly unjust since it taxes the notional income of the salaried person which is against the basic principle of taxation since this notional income will never ever be received by the taxpayer. Similar notional income in the hands of employees of educational institutions, restaurants, hospitals, clinics etc. is already exempt under clause (53A) of Part I of Second Schedule. The rationale underlying this proposal is that:

a) It will boost the housing industry since in today's economic situation and the presence of speculators in the property market it is next to impossible for a salaried employee to own a house on commercial mark-up rates. Once this industry takes off there will be provision of cheap houses and there will be increase in tax revenue from housing and allied sector;

b) It will contribute in enhancing the national economic activity by extending affordable loans and advances to middle class income group of society;

c) It will remove detrimental financial ramifications due to incremental rate of interest on notional income for all other salaried persons, who are already facing a tough challenge to survive within their paltry resources- all legally declared and tax paid; and

d) The FBR is also cognizant of this fact by stating in Clause (53A) that "any other perquisite or benefit for which the employer does not have to bear any marginal cost; and the Circular Letter 4(8)IT-J/91 dated June 30, 1991 issued by then CBR opines that "...it is not desirable to tax such notional income...". The same principle should be applied in this situation.

4.3 LIMIT OF EMPLOYER'S CONTRIBUTION TO PROVIDENT FUND-CLAUSE (3) PART I OF SIXTH SCHEDULE

Through Finance Act 2008, in clause 3 of Part I of Sixth Schedule the employer's contribution in the recognized provident fund in excess of Rs.100,000 is deemed to be Income of the employee. This matter has importance since employer contribution, though a constructive receipt is not an actual receipt as the same is not at the disposal of an employee and therefore tax incidence should not be levied at the time of contribution. Further, where such Fund is recognised under income tax laws, the payments from the fund to the employee (which include employer's contribution) are exempt under clause 23 of Part I of Second Schedule to the Ordinance.

Recommendation

The entire amount of contribution by employer should be exempted, as the same is ultimately exempt in the hands of recipient at the time of retirement or leaving employment.

Rationale

It is illogical that when an amount is ultimately exempt, it is taxed at the time of contribution. It is suggested that ceiling of Rs.100,000 may be withdrawn as in many case this is the only long term benefit.

Further taxation of salary income is permitted by Section 12 on receipt basis only, therefore in the event that there is an excess contribution to an employee above Rs. 100,000 how would that be taxed in the hands of an employee as he would not be receiving that contribution rather the contribution will be credited to the Fund which will be payable to an employee when he retires or resigns from service.

Further, the employer's contribution can be withheld by the employer in case if employee is charged with misconduct. Due to such eventuality, it is only at the time of retirement or resignation that one can say with certainty that the employer's contribution would be received by the employee.

4.4 DEPRECIATION ON ASSETS UNDER THE MUSHARAKA ARRANGEMENT - SECTION 22

Musharaka has been recognized as one of the Islamic modes of financing. However, issue arises in respect of the deductibility of tax depreciation on assets used for structuring of Islamic finance - "Musharaka"

FBR, vide its letter C.No.4(78)TP-I/90 dated July 11, 1991 (considering the substance of the Musharaka) has already opined the said arrangement as that of lending finances/ loans against the assets. The provisions of Section 28(1) (h) also consider the profit under Musharaka arrangement as profit on debt (interest) and allow the same as a deductible charge to the borrower.

Recommendation

It is recommended that following explanation may be added in Section 22(15) in the definition of 'depreciable asset':

> *"Depreciable asset includes any asset used to secure the finances provided under the Islamic mode of finance (except Ijara/leasing), where such asset is used by the borrower for the purpose of his business."*

Rationale

In the absence of any suitable explanation in law, the provisions of the Islamic modes of financing will be ineffective and will not provide level playing field for Islamic mode of financing.

4.5 GROUP TAXATION - SECTION 59AA

Under Section 59AA of the Ordinance, holding companies and 100% owned subsidiaries

may opt to be taxed as one fiscal unit subject to fulfillment of certain conditions as provided in the aforesaid Section read with Rule 231D of the Income Tax Rules, 2002.

Recommendations

In order to mitigate the above discrimination as contained in the existing provisions of Section 59AA of the Ordinance, the following clause may be inserted in Part IV of the Second Schedule to the Ordinance:

> *"The condition of 100% shareholding in the subsidiary company by the holding company as prescribed in Section 59A would be reduced to 75%"*

In view of the hardship being faced by the holding companies of delisted companies, it is suggested that when a company is delisted from the Stock Exchanges, the condition of ownership of 100% may be reduced to say 90%. Following clause may be inserted in Part IV of the Second Schedule to the Ordinance:

> *"The condition of 100% shareholding in the subsidiary company by the holding company as prescribed in Section 59AA would be reduced to 90% in case the subsidiary company being a listed company undergoes delisting and becomes a non-listed company"*

Rationale

Under normal circumstances the condition of 100% ownership can easily be met but there may be situations where, due to circumstances beyond the control of the holding company, it is not possible to hold 100% shares in the subsidiary company.

For instance, in case where certain shares are owned by employees or when a subsidiary company is listed for substantial number of years and subsequently becomes delisted, some minor shareholders remain untraceable for a variety of reasons and therefore the holding company is unable to acquire all the shares although it is willing to do so.

In general, the untraceable shareholders constitute approximately 10-20% of the total shareholding of the subsidiary company. In such circumstances, the holding company would not be in a position to meet the condition of acquiring 100% shareholding in the subsidiary company for the purpose of availing group taxation under Section 59AA.

It is also pertinent to mention that in a number of countries, there are instances where 100% ownership by the parent is not mandatory for the purpose of availing the benefit of group taxation. The required percentage of shareholding by the parent company to avail the benefit of group taxation in France is 95%, Spain & UK is 75% and that in Denmark & Italy is 50%.

In terms of Section 59B of the Ordinance, holding company is required to maintain 55% shareholding in case one of the companies in the group is listed whereas 75% shareholding is required to be maintained if none of the companies in the group is listed. The provisions of Section 59AA of the Ordinance requiring 100% ownership to avail group taxation are discriminatory if compared with the provisions of Section 59B of the Ordinance, allowing group relief to the companies.

4.6 GROUP RELIEF - SECTION 59B

Section 59B seeks to provide group relief in the form of adjustment of losses between holding and subsidiary or subsidiary to subsidiary if they fulfil the minimum holding criteria. The required holding is 55% if one of the companies in the group is a listed company and 75% if none of the companies in the group is listed company.

The law further prescribes certain conditions that the group companies have to fulfil in case they avail the facility of group relief. The conditions are set out in sub-section (2) of Section 59B. One of the conditions under sub-section 2(c) of Section 59B is as follows:

> *".....holding company, being a private limited company with seventy-five percent of ownership of share capital gets itself listed within three years from the year in which loss is claimed."*

Recommendation

It is suggested that sub-section (2) (c) of Section 59B be substituted as follows:

> *"At least one of the companies of the groups shall get itself listed within three years from the year in which loss is claimed if all companies of the groups including the holding companies are private limited companies."*

Rationale

Requiring holding company to get itself listed within three years from the year in which loss is claimed should be removed and instead there should be a condition that at least one company within the group should get itself listed. This would bring the condition in line with other condition of minimum holding discussed above where a higher holding is only required if none of the companies in a group is a listed company.

Further the requirement to list the holding company is against the principle of group formation and consolidation as a group may not like to keep its investments in a listed company due to the risk of hostile takeovers etc. as in such an event the group may lose control on its entire entities within the group.

4.7 TAX CREDIT FOR INVESTMENT - SECTION 65B

Tax credit under Section 65B is allowed to an industrial undertaking on amount invested in the purchase of Plant and Machinery for the purposes of extension, expansion, balancing, modernization and replacement of Plant and Machinery already installed therein. Further in order to clarify the scope of the words balancing, modernization and replacement the words "extension" and "expansion" were added in Section 65B of the Ordinance through Finance Act, 2012. However, the field officers of the FBR misread/misinterpreted the amendment and tried to confine the scope of tax credit under this Section to the BMR of Plant and Machinery only and disallowed the tax credit on "extension" and "expansion" made in Tax Years 2011 and 2012. This has resulted in a number of litigations and therefore has shaken the confidence of the businesses.

Recommendation

In Section 65B (1) after the word 'purchase' the words 'and installation' should be inserted. Further, a clarification, that the words "extension" and "expansion" inserted by Finance Act 2012 shall have retrospective effect and shall be deemed to have been inserted since First July 2010.

Rationale

The word "purchase" gives a narrow meaning and indicates the cost of acquiring the plant and machinery excluding the installation cost thereof. Whereas Section 76(2) of the Ordinance clearly includes any incidental charges to be the part of the cost of asset. Plant and machinery itself are incomplete and not workable unless installed. On the other hand in Section 65E the words used are amount invested in the purchase and installation of plant and machinery. Further, by clarifying the scope of extension and expansion, the ambiguities prevailing in the field offices would be removed and will end the undue litigation faced by the industries.

4.8 PRINCIPLE OF TAXATION OF AOP - SECTION 92

Proviso inserted vide Finance Act, 2014 required a company being member of an AOP to be taxed separately from AOP. This created a hardship in cases where income of AOP falls under FTR because the withholding rate prescribed for companies and AOP under Section 153 varies. Further such company could not claim credit of tax withheld in the name of AOP.

Recommendation

An explanation should be added in Section 92 for clarifying position of FTR cases, applicable tax rates thereon and to allow such company to claim proportionate credit of tax withheld in the name of AOP.

4.9 TIMINGS FOR FILING OF RETURN OF INCOME - SECTION 114

The due date for filing of income tax returns by salaried individuals is 31 August which is too short for compiling the required information and obtaining proof and evidences. Earlier, the deadline was 30 September.

Recommendation

Due date for filing of income tax return by salaried individuals, non-salaried individuals and AOP's be extended to 30 September or 60 days from the date of notification of Return Forms or the e-filing system is in place, whichever is later.

Rationale

Past experience indicate that the Income Tax Return forms etc. are not notified well in time, e-filing system is also not in place in time and the due date of filing of Income Tax Returns etc. is always extended on one pre-text or other.

Delay in finalizing the Income Tax Return forms etc. and extension in due date of filing of Income Tax Returns etc. causes un-necessary burden of last minute rush of work.

4.10 TIME LIMIT FOR FURNISHING RETURN OF INCOME UPON NOTICE FROM COMMISSIONER – SECTION 114 (4)

The Commissioner is empowered to call for the return of income from any person who in his opinion was required to file a return of income for the current year or any of the preceding five years but has not furnished the same. A minimum time of 30 days was required for compliance. Through an amendment is Section 114(4), now this minimum time period has been dispensed with and left open at the discretion of the Commissioner.

Recommendation

The amendment made through Finance Act, 2013 should be withdrawn.

Rationale

The dispensation of the minimum time for compliance of notice under Section 114(6) [furnishing of return of income upon notice from Commissioner] means further discretionary powers to the Commissioner. There may be cases where the return could not be furnished within the short time allowed by the Commissioner for genuine reasons.

4.11 REVISION BY CHIEF COMMISSIONER IN AUDIT SELECTION – SECTION 122B

Currently, no provision is available for Chief Commissioner to call for revision of audit cases on an application filed by the tax payers. This creates undue administrative hassles for taxpayers.

Recommendation

Section 122B should be revised so as to give powers to the Chief Commissioner for revision of cases selected for Audit u/s 177.

Rationale

This would assist in simplifying the administrative procedures.

4.12 COLLECTION OF TAX IN THE CASE OF PRIVATE COMPANIES AND AOP'S - SECTION 139

Section 139 of the Ordinance places un-limited liability on the directors/shareholders of a Private Limited Company, which is against the basic concept of formation of limited liability business entity.

Recommendation

Section 139 should be suitably amended to exclude the directors and shareholders of a Private Limited Company from the discharge of tax liability of the Company. It may be mentioned that in case of fraud by the director(s), the Companies Ordinance, 1984 does not protect them for discharge of any liability of the company.

Rationale

It is without any doubt that corporate sector is better regulated and documented as compared to an association of persons or individuals doing business. However, there are number of provisions in the Ordinance that do not support the formation of corporate sector which discourages formation of regulated and documented sector.

4.13 ADVANCE TAX PAID BY THE TAXPAYER - SECTION 147(4A)

An association of persons (AOP) and company are required to estimate their income before payment of last installment of advance tax. If such estimate results into tax payable higher then on the basis of ratio of tax to turnover of the previous year (base year) then accordingly, pay the difference along with the 4th installment due.

The time for making the estimate of income has been changed from 'before the last installment is due' to 'before the 2nd installment is due. 50% of the difference will be required to be paid along with the 2nd installment and 50% of the difference with 3rd and 4th installments in two equal installments.

Recommendation

Original provisions be restored

Rationale

The amendments are non-practical, particularly, in cases of non-listed company and association of persons who are not required to prepare quarterly financial statements. Further, even in case of listed companies, the estimate of tax liability on quarterly basis after determining the taxable income is not a simple task.

4.14 PAYMENTS TO NON-RESIDENTS – SECTION 152

The law requires that where a payment is not likely to be chargeable to tax, the payer is required to file a notice to the Commissioner. The Commissioner is required to make an order on such notice within 30 days.

Recommendation

It is suggested that the period of 30 days provided in Section 152(5A) be curtailed to 15 days. A proviso should be inserted that if the taxpayer is not served with an order on notice filed under Section 152(5) within 15 days, the notice shall be taken as grant of exemption from withholding tax.

If multiple payments are made on account of reimbursement of expenses from time to time under a formal agreement, approval by the Commissioner for one such payment should be treated as enough for all other payments under the same agreement.

Exemption from approval of the Commissioner should be provided for small payments amounting up to a maximum limit USD 1,000 or equivalent currency.

Rationale

Payments to non-residents are critical for business, therefore, 30 days appears to be higher side. Further, there is no mention in the law that if a Commissioner does not pass an order within 30 days, what should be the outcome. Further that approval of Commissioner is required u/s 152 (5) for reimbursement of expenses to foreign group companies and other foreign distributors, even for payments of iterative nature.

4.15 EXECUTION OF CONTRACT - SECTION 153(1) (c)

The term 'execution of contract' under Section 153(1) (c) is open ended (except for specific exclusion of sale of goods and rendering or providing of services) as every transaction is an execution of a contract under the Contract Act.

Recommendation

The term 'execution of contract' for the purposes of Section 153 should be defined.

Rationale

The term 'execution of contract' is unique in Pakistan as this term does not exist in any regional or international fiscal laws. Sale and purchase of immoveable property, right to use an intangible, etc., do not necessarily have any element of profit.

4.16 WITHHOLDING TAX ON PAYMENTS FOR GOODS AND SERVICES – SEC. 153

As per provisions of Notification SRO 586(I)/91 dated 30-06-1991 withholding tax is not applicable on payment of Rs.25,000/- against supplies and on payment of Rs.10,000/- against services. In the normal course of business taxpayers have to make various payments.

Recommendation

An explanation should be inserted to clarify the applicability of the SRO 586. It is further suggested that the thresholds that were set in 1991 should also be revised to Rs 100,000 and Rs. 50,000 for goods and services respectively.

Rationale

During the proceedings of withholding taxes the Taxation Officers do not allow the benefit of the above SRO to the taxpayers and charge tax on aggregate of below taxable limit payments which is against the law and creating the hardship for the taxpayers.

4.17 PRESCRIBED WITHHOLDING AGENTS – SECTION 153(7)

The existing sub-clause (h) and (i) of clause (i) of sub-section (7) of Section 153 is not appropriately drafted. In many cases where the turnover for the preceding years was less than Rs.50 million and the current year turnover exceeds Rs. 50 million, the taxpayers are in a fiasco as to their obligations of the withholding agent since when (from the start of the current year or the day the turnover exceeds the threshold or the following year).

Recommendation

An explanation should be added at the end of sub-section (7) of Section 153 to clarify that the withholding agent shall start to withhold tax from the year following the year in which the threshold of Rs. 50 million is reached.

Rationale

To bring the concept of threshold of turnover with reference to immediately preceding year.

4.18 TIME LIMIT FOR ORDER AND APPEAL THEREOF – SECTION 153(4)

A time limit has not been fixed for the Commissioner to pass an order under Section 153(4). Furthermore, no opportunity is provided to the taxpayer of being heard. This creates an injustice for the taxpayers.

Recommendation

Sub-section (4) of Section 153 may be substituted with the following:

"The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such enquiry and providing a reasonable opportunity of being heard to the applicant if he thinks fit, may allow in cases where tax deductible under sub-section (1) is adjustable by order in writing within fifteen days from the date of receipt of application, any person to make the payment without deduction of tax or deduction of tax at a reduced rate."

Rationale

It would be in the interest of justice and equity, if the Commissioner is required to pass the order within a fixed time limited and a reasonable opportunity of being heard is granted to the taxpayer before any adverse order is being drawn by the Commissioner.

4.19 PERSONS REGISTERED UNDER THE SALES TAX ACT

Through Finance Act, 2013 every Sales Tax Registered person was added in the list of prescribed persons for the purposes of Section 153. As a result small entities in the status of AOP and Individual registered under the ST Act have also been made withholding agents without any threshold. These small entities are mainly suppliers to withholding agents under the Ordinance who fall in the definition of wholesaler under the ST Act.

Recommendation

This category introduced vide Finance Act 2013 under Section 153(7) (i) (j) should be deleted.

Rationale

To be a withholding agent for such small entities is very cumbersome and requires additional resources and cost. We understand that the monitoring cost and resources required by FBR has no cost benefit.

4.20 MONITORING OF WITHHOLDING TAX - SECTION 161

The taxpayers are being selected for monitoring of withholding tax under Section 161 simultaneously for more than one year. In most of the notices figures are taken from the financial statements and withholding agent is required to reconcile those figures with the payments. This lengthy exercise involves lot of time and resources of the taxpayers.

Further as per provisions of Section 174 of the Ordinance a taxpayer is required to maintain accounts and documents for six years after the end of tax year to which they relate. Whereas, no time limit is prescribed in Section 161 of the Ordinance for monitoring of withholding tax. The taxpayers are receiving notices for the period beyond six tax years for which they are not obliged to maintain / retain records which create hardship to the taxpayers.

Recommendation

Since the taxpayers are filing monthly withholding tax statements, it is suggested that the same data should be used for monitoring and only notices in case of any material difference should be issued. Moreover monitoring of one year should be carried out at one time.

It is suggested that a time limitation be incorporated in Section 161 of the Ordinance for monitoring of withholding taxes.

Rationale

Monitoring of withholding taxes is to be used as deterrent and not as revenue measure. This kind of exercises also results in harassment and unethical practices which will be avoided.

4.21 COMPENSATION TO WITHHOLDING AGENTS - SECTION 153

Federal Board of Revenue (FBR) has been availing the services of withholding agents free of charge.

Recommendation

Withholding agents should be allowed 10% of the amount of tax collected either as service charges on the principle of natural justice or entitled to claim tax credit against tax payable.

Rationale

These withholding agents have been incurring heavy expenditure in the form of changes in their systems, hiring and training of their staff, storage for retention of withholding Tax records and similar operating expenses. They are also subject to tax audits of withholding taxes and then penalized for any default which at one hand puts thereon an additional cost.

4.22 ADDITIONAL PAYMENT FOR DELAYED REFUNDS - SECTION 170(4)

Under Section 170(4) of the Ordinance, the Commissioner on receipt of a refund application may serve an order within 60 days. Section 171(1) provides that the refund may be paid within three months of the due date which has been explained to be the date of order under Section 170.

Recommendation

It is suggested that if there is no other observation by the Commissioner within the prescribed time, it should be deemed to have been verified.

Rationale

To remove anomaly in the law.

4.23 OFFENCES AND PENALTIES– SECTION 182

Penalty for non-furnishing of return of income within the due date prescribed under Section 182 is equal to 0.1% of the tax payable for each day of default subject to a minimum penalty of Rs.20,000 and a maximum penalty of 50% of the tax payable in respect of that tax year.

Through an explanation, it has been declared that the expression ‘tax payable’ means tax chargeable on the taxable income on the basis of assessment made or treated to have been made under sections 120, 121, 122 or 122C of the Ordinance.

Recommendation

The explanation in column (3) of Para (1) of the Table under Section 182(1) should be deleted.

Rationale

It has been noted that the tax authorities have invariably started levying penalty on the basis of tax payable in the return without taking into account the taxes already paid / deducted. This situation is causing serious hardship to the taxpayers, as tax authorities are using the explanation as a tax collection avenue instead of a deterrent.

Logically, imposition of penalty should have been restricted to the extent of tax short paid along with the return, as was held by the appellate authorities before insertion of the said explanation, and if there was no tax payable then token amount of penalty should have been imposed, as was the case before substitution of Section 182 of the Ordinance.

4.24 ADVANCE TAX ON PRIVATE MOTOR VEHICLES - SECTION 231B

Currently advance tax under Section 231B applies on purchase of locally manufactured motor vehicles.

Recommendation

Modaraba's should be exempted from payment of advance tax under Section 231B in respect of vehicles leased by them.

Rationale

Persons such as Modaraba's have to bear this tax on the motor vehicles leased by them. On the other hand Modaraba's are exempt from Income Tax under the Ordinance, provided they distribute 90% of their profits to their members (shareholders). Thus a Modaraba being a lessor cannot adjust the advance tax paid which results into refund claim.

4.25 DOMESTIC AIR TICKET – SECTION 236B

In case of domestic air ticket, advance tax of 5% is collected by the airlines under Section 236B of the Ordinance which is adjustable by the taxpayer. Airlines do not provide CPR to the companies or to their travel agents. Further, FBR system usually fails to verify the tax so deducted, which results in additional burden to the companies.

Recommendation

FBR should make it mandatory for all Airlines operating on domestic routes to ensure that NTN/CNIC of passenger or his/ her employer appears on the Air ticket issued by the airline. This would enable the tax payer (passenger or his/her employer) to adjust the advance tax from its tax liability. Alternately the Airline should be required to issue tax

deduction & deposit certificate. This shall enable companies to indicate their NTN on all tickets which are paid for travel of company employees.

Rationale

To facilitate tax payers.

4.26 WITHHOLDING TAX ON PROMOTIONAL MATERIAL - SECTION 156

Contrary to this the tax authorities tend to treat the post sales free issues and incentives as 'prize', and accordingly demand 20% withholding tax by invoking Section 156 of the Ordinance.

Recommendation

Following explanation should be added under Sec 156:

> *"The term Prize means winning by chance and does not include payments either in cash or in kind to any person on achieving sales target. The explanation shall be deemed always to have been so added and shall have effect accordingly"*

Rationale

Many businesses and in particular manufacturers allow incentives to their distributors, wholesalers and retailers of giving free of cost goods on achieving sales targets as an incentive to promote sales of their products. Such incentive or benefit clearly falls in clause (d) of sub-section (1) of Section 18 and is chargeable to tax under the head income from business.

4.27 DEPOSIT OF WITHHOLDING TAX

Previously withholding agents were required to deposit withholding tax within seven days from the end of each fortnight however it is now required to be paid within seven days from the end of each week, which is very time consuming and increases the cost of compliance.

Recommendation

It is suggested that law should be amended so that withholding amount may be deposited within 7 days of end of month, i.e. on monthly basis.

Rationale

To facilitate tax payers.

4.28 ADVANCE TAX – SECTION 147

A company paying advance tax u/s 147 is also subject to deduction of tax at source under various sections of the Ordinance, such as Section 153 etc.

Recommendation

All companies falling in the jurisdiction of Large Taxpayers Unit should be allowed to opt for paying upfront advance tax u/s 147 every month. It is suggested that where a company is complying with such option then it should be given an option to avail exemption from withholding of all taxes.

Rationale

This would save operational cost for both the taxpayers and the Exchequer. The taxpayer will also be relieved from the hassle of collecting challans and getting them verified from FBR system which is cumbersome exercise and in majority of cases results in significant reduction of tax credit.

4.29 CHARGE AGAINST BAD & DOUBTFUL DEBTS

The Taxation Officers are interpreting total advances as 'Advances' shown on the face of the balance sheet which are net of provision for bad debts (non-performing debts) specifically created by the banks.

Recommendation

An explanatory note should be added under Rule 1(c) of the Seventh Schedule to explain that total advances should be the gross amount reflected in the balance sheet before any provision.

Rationale

This means an illogical calculation of admissible provision for bad debts on the net advances (gross advances minus provision made in the accounts) as shown on the face of the balance sheet instead of the gross advances. In other words, to exclude the provisions from the gross advances would be to disallow the actual provisions twice which cannot otherwise be claimed under any provisions of the Seventh Schedule.

4.30 GROUP RELIEF - SEVENTH SCHEDULE

Sub-rule 2 of Rule 8 of the Seventh Schedule provides that if a subsidiary or holding company wishes to surrender its assessed losses for the tax year in favour of holding or subsidiary company, both entities should be banking companies.

Recommendation

This anomaly should be removed.

Rationale

Under the normal banking business, one banking company cannot be a subsidiary of another banking company. Resultantly, Sub-Rule 2 of Rule 8 of the Seventh Schedule is redundant for banking companies.

4.31 INSURANCE COMPANIES

Determination of Taxable Income

Determination of the taxable income of the life insurance business is made as per the Fourth Schedule the Income Tax Ordinance 2001. Life insurance companies are required to produce two sets of financial statements viz statutory accounts under Section 46(1)(a) of the Insurance Ordinance 2000, referred to as "Regulatory Returns" and annual accounts under Section 233 of the Companies Ordinance 1984, referred to as "Published Financial Statements".

Recommendation

Following amendment (underlined) is suggested to be made in Rule 2 of the Fourth Schedule of the Insurance Ordinance, 2000 (XXXIX of 2000):

"The profits and gains of a life insurance business shall be the current year's surplus appropriated to the Shareholders' Fund as disclosed in the profit and loss account prepared under Section 46(1)(a)(ii) of the Insurance Ordinance, 2000 (XXXIX of 2000), as per advice of the Appointed Actuary, net of adjustments under sections 22(8), 23(8) and 23(11) of the Insurance Ordinance, 2000 (XXXIX of 2000) so as to exclude from it any expenditure other than expenditure which is, under the provisions of Part IV of Chapter III, allowed as a deduction in computing profits and gains of a business to the extent of the proportion of surplus not distributed to policy holders.

Provided that where there is any difference in the published financial statements of the life insurance company and the statements required to be filed under Section 46 of the Insurance Ordinance, 2000, the statements required to be filed under Section 46 of the Insurance Ordinance, 2000 shall be considered for computing the profits and gains of a life insurance business."

Rationale

Both the Regulatory Returns and Published Financial Statements consist of similar statements including a profit and loss account. There is a current initiative of ICAP to modify the contents of the Published Financial Statements so as to produce a single Statement of Comprehensive Income instead of two separate statements for the shareholders' fund (Profit and Loss Account) and Statutory Funds (Revenue Accounts) in accordance with the requirements of the International Financial Reporting Standards (IFRS).

As a result it is necessary to clarify that the reference to "profit and loss account" in rule 2 of the Fourth Schedule of the Income Tax Ordinance 2001 relates to the statement required to be produced under Section 46(1)(a)(ii) of the Insurance Ordinance 2000.

Deduction of Tax at Source (Recipient)

In the case of banking companies, an exemption from withholding of tax has been provided on payment of monthly advance tax. Similar treatment can be provided to the Insurance Companies, which are also working as an organized sector.

Recommendation

It is recommended that same principle be adopted for the insurance companies.

Rationale

To remove anomaly in the law.

Withholding Tax on Maturity Proceeds of Life Insurance Policies

Benefits paid out under life insurance contracts are generally exempt from income tax. In the recent past, however, the Income Tax Department have sought to pressurize life insurers to deduct withholding tax under Section 151(1)(d) of the Income Tax Ordinance 2001 from maturity values paid out on life insurance policies under the garb of Section 151 of the Ordinance. The relevant Section is as follows:

> *"151. Profit on debt:- Where*
> *(a) . . . .*
> *(d) a banking company, a financial institution, a company referred to in sub clauses (i) and (ii) of clause (b) of sub-section (2) of Section 80, or a finance society pays any profit on any bond, certificate or debenture or instrument of any kind (other than a loan agreement between a borrower and a banking company or development finance institution) to any person other than financial institution.*

the payer of the profit shall deduct tax at the rate specified in Division I of Part III of the First Schedule from the gross amount of the yield or profit paid as reduced by the amount of Zakat, if any, paid by the recipient under the Zakat and Ushr Ordinance, 1980 (XVII of 1980), at the time the profit is paid to the recipient."

Recommendation

In order to remove any ambiguity it is suggested that a provision be included in the Income Tax Ordinance clearly stating that Section 151 does not apply to any amounts paid out under a contract of life insurance.
A new sub-section - 151 (2A) should be introduced as under:

> *"This section shall not apply to any amount paid out under a contract of life insurance as defined in Section 2(xxvii) of the Insurance Ordinance, 2000 (XXXIX of 2000)."*

Rationale

The sub-section reproduced above clearly is meant to apply to financial instruments and not to policies of life insurance. Further, vide FBR's C. No. IT.JI.1(7)/84 dated February 08, 1988 it was clarified that insurance premiums to and claims discharged by the Insurance Companies are not liable to deduction of tax under the corresponding Section 50(4) of the Income Tax Ordinance, 1979 and this fact was further re-confirmed vide C. No. 1(25) IT-1/80 dated October 01, 1980.

4.32 TAX ON ELEMENT OF INCOME OF MUTUAL FUNDS

In Pakistan the accounting practice for Element of Income is being followed by the mutual funds for years in compliance of the Fifth Schedule of the NBFC Regulations 2008 which requires to disclose element of income in the income statement.

The purpose is:

- To ensure that any issuance or redemption of units do not affect undistributed income per unit of the Fund.
- To ensure equal distribution to all the unit holders at the time of distributing dividend during the year or at the close of the year.

Recommendation

In order to remove this anomaly amendment is required in clause 99 of the Second schedule of Income Tax Ordinance and in Rule 64 of NBFC Regulation 2008 simultaneously as follows:

Clause 99 of Part I of Second Schedule to Income Tax Ordinance 2001

Any income derived by a Collective Investment Scheme or a REIT Scheme, if not less than ninety percent of its accounting distributable income of that year, as reduced by capital gains whether realized or unrealized, is distributed amongst the unit or certificate holders or shareholders as the case may be.

Provided that for the purpose of determining distribution of at least 90% accounting income, the income distributed through bonus shares, units or certificates as the case may be, shall not be taken into account.

Explanation— *For the purpose of this clause, the expression "~~accounting~~ distributable income" means income calculated under the generally accepted Accounting Principles and verified by the auditors.*

Rule 63 of NBFC Regulations 2008

Amount distributable to shareholders.- *An Asset Management Company on behalf of a Collective Investment Scheme shall, for every accounting year, distribute by way of dividend to the unit holders, certificate holders or shareholders, as the case may be, not less than ninety per cent of the ~~accounting~~ distributable income of the Collective Investment Scheme received or derived from sources other than unrealized capital gains as reduced by such expenses as are chargeable to a Collective Investment Scheme under these Regulations.*

Provided that for the purpose of determining distribution of at least 90% of distributable income, the income distributed through bonus shares, units or certificates as the case may be, shall not be taken into account

*Explanation- For the purpose of this Regulation the expression "accounting * "distributable income" means income calculated under the International Accounting Standards and verified by the auditors.*

Rationale

On a conceptual basis, the element of income does not qualify for recognition as income or expense under IFRS. However since local law prevails over the IFRS, the Mutual Funds are bound to follow the requirements of NBFC Regulations in contravention of the IFRS and the International practice where element of income is neither calculated nor recorded in P&L.

Basically the element of income represents the capital portion of the net asset value (NAV), therefore this should not be recorded in the Income statement and instead recognized directly in the Distribution Statement.

Due to compliance with the NBFC Regulations the capital part of the contribution by the unit holders being subject to condition laid down in clause 99 of the Second Schedule of the Income Tax Ordinance thereby causing hardship to the Mutual Fund industry.

4.33 BONUS SHARES ISSUED BY COMPANIES - SECTIONS 236M & 236N

Under the previous scheme of taxation that has prevailed in Pakistan and adopted from the Income Tax Act, 1922, the value of bonus shares or the amount of any bonus declared, issued or paid by a company to its shareholders was always excluded from the definition 'income' due to the reason that the shareholder does not derive any income from the receipt of bonus shares. However, vide Finance Act 2014 the value of bonus shares has been made taxable under 'Income from Other sources'.

Moreover, the bonus issued does not increase the resources of the recipient against any payment of consideration, therefore it cannot be termed as income in the hand of recipient and distribution by the issuer resultantly applying tax on such issue does not fall under the ambit of Income Tax Ordinance, as it is merely an accounting treatment for reclassification of reserves of the issuing company, resulting in diluted earnings per share amounts for profit or loss to such ordinary equity holder.

Recommendation

It is proposed that Section 236M and 236N inserted by Finance Act, 2014 be withdrawn.

Rationale

To remove hardship of the recipient of bonus shares.

4.34 WITHHOLDING AGENTS - SECTION 164

Various withholding agents including but not limited to electricity distribution companies, telecommunication companies, airlines and other government and local bodies do not

provide copies of challans to the taxpayers, as their customer base is too high and they undertake business with masses at large. Previously a certificate of collection or deduction of tax was treated as sufficient evidence to claim credit of taxes. However, in the Finance Act 2013, obtaining a challan has been made mandatory.

Recommendation

A new clause should be inserted in Part IV of Second Schedule as follows:

"Section 164 shall not apply in the case of following withholding agents:

- *Electric Distribution Companies*
- *Telecommunication Companies*
- *Airlines*
- *Banks and other finatncial institutions*
- *Local and statutory governmental bodies*
- *Other entities as may be prescribed for this purpose.*

The certificate issued by them or their agent mentioning the amount of tax collected shall be treated as sufficient evidence."

Rationale

This may result in resolving dispute with tax authorities and restricting disallowance of credit for taxes deducted at source.

4.35 TERM 'ANY BUSINESS CONNECTION' - SECTION 101(3) (d)

The words 'any business connection' have very broader meaning. The same has been used liberally by tax authorities even for activities carried out by independent third parties including but not limited to distributors and other intermediaries, in the ordinary course of their own business, outside Pakistan. This results in unnecessarily extending the scope of Pakistan source income.

Recommendation

The clause (d) in sub-section (3) of Section 101 should be omitted.

Rationale

For clarity and to avoid misinterpretation.

4.36 WITHHOLDING TAX ON TERMINATION OF EMPLOYMENT

The law allows a salaried taxpayer receiving amount on termination of employment under Section 12(2) (e) to elect for the amount to be taxed at the average tax rate for the three preceding tax years. Section 149 however does not allow the employer to withhold tax on such amount at a tax rate lower than the employee's average rate of tax for the year. This results in excess tax deduction and ultimately a refundable position for the employee.

Recommendation

A new sub-section should be added after sub-section (2) of Section 149 as follows:

"(2A) The average rate of tax, for the purposes of sub-section (1), of an employee receiving an amount under sub-clause (iii) of clause (e) of sub-section (2) of Section 12, opted to be taxed under sub section (6) of Section 12 shall be computed in accordance with the following formula, namely:–

A/B
*where **A** is the total tax paid or payable by the employee on the employee's total taxable income for the three preceding tax years; and*

***B** is the employee's total taxable income for the three preceding tax years."*

Rationale

To facilitate salaried class.

4.37 TRANSFER PRICING

Throughout the world, fiscal regulations prescribe provisions relating to non-arm's length consideration and taxing the sum falling outside this purview. This is termed as taxation of 'Transfer Pricing'.

Through the Ordinance special provisions were introduced for that purpose (Section 108). These provisions are almost in line with the international best practices as laid down in the principles laid down by the Organization for Economic Cooperation Development (OECD).

Almost all the entities engaged in manufacturing sector, especially those in pharmaceutical group, were subjected to arbitrary additions to income on that account under the repealed Act. These additions were contested in appeals and some companies are engaged in protracted litigation. That experience has revealed that there is no deficiency or shortcoming in the law. The problems arose in implementation and arbitrary attitude of tax officials. Provisions relating to non-arm's length consideration were streamlined in the Ordinance. Furthermore, it has been specifically provided that such laws will be implemented in line with the guidelines laid down by OECD.

Recommendation

The institute can undertake an effective role in the implementation of revised and improved provisions relating to non-arm's length consideration. It has been experienced throughout the world that fiscal issues relating to non-arm's length consideration are matter of determination of fact rather than application and interpretation of any law. OECD model also supports the same principle.

It is suggested that an exercise and then agreed upon processes be undertaken to prescribe the procedures for implementation of fiscal measure for taxing non-arm's length transactions.

Rationale

Since the introduction of the Income Tax Ordinance, 2001 there are very few cases where tax proceedings have been finalized under the new provisions of the Ordinance. It is considered that unless well laid down processes and procedures are agreed upon between tax officials and the taxpayers in accordance with the principles laid down by the OECD, problems which arose under the repealed Act may be repeated notwithstanding the improved and well laid down laws.

4.38 IMMUNITY FROM SELECTION FOR AUDIT - SECTION 214D(4) & (5)

Immunity from selection for audit has been granted to a person registered as '**Retailer**' under Rule 4 of the Special Procedure Rules, 2007 whose name remains on the sales tax 'Active Taxpayers' List' throughout the tax year.

This immunity from selection for audit includes "automatic selection for audit" under Section 214D (1) as well.

Automatic selection for audit under Section 214D (1) applies to a person who has not filed the return of income by the due date (including date extended by the Board and extension granted by the Commissioner). On the other hand if a person has not filed the return by the due date, such person by virtue of definition of 'active Taxpayers' List' given in the ST Act, automatically stands excluded from the sales tax 'Active Taxpayers' List'. Accordingly, the condition of Immunity from selection for audit is not satisfied. In other words, once a person is automatically selected for audit under section 214D (1), such person cannot claim immunity from selection for audit under section 214D (4).

Recommendations

- The above provision of law have been not properly placed in the Ordinance;
- Reference of sub-section (1) in section 214D (4) appears to be redundant.

Rationale

Although immunity from automatic selection for audit under Section 214D(1) [i.e., due to non-filing of the return of income by the due date or extended date and non-payment of tax due on the basis of income declared] has been given to such retailers who remain on the active taxpayer list of sales tax throughout the tax year, but in view of the foregoing definition of "active taxpayer" introduced in the ST Act, the non-filling of income tax return by the due date will make such person a non-active taxpayer under the ST Act and hence will not qualify for immunity.

4.39 STRENGTHENING OF AUDIT

Tax audit is the core function of any revenue authority and should receive the maximum focus and attention. The prevailing structure of Audit Wing and its field formation are not geared to undertake the required task.

Recommendation

The system needs a complete overhaul to cater to the complexities and diversities of tax audit. Modern day tax audit requires resources in auditing, accounting, information technology, together with specialized sectorial knowledge. The audit function should be completely separated from rest of the FBR. A separate audit division needs to be created to plan and execute the work of audit.

Semi Government Autonomous body should be formed hiring accounting and audit professionals instead of Civil Service Academy trained CSP officer.

The national audit plan should be chalked out each year based on research and investigative work carried out by the Audit Division. The audit at the field formation should only be conducted under direct supervision, scrutiny by the division based on risk areas identified during enquiry work. There should be proper documentation of the audit process and the same should be carried out in a structured manner including a review by the supervisor before drawing any final conclusion.

Rationale

Tax audit if properly planned and executed, can act as the most effective deterrent towards under reporting. We feel that under reporting in Pakistan cannot be assigned to any reason other than the failure of Federal Board of Revenue (FBR) to create the fear of audit amongst the taxpayers.

This failure is stemming due to lack of commitment, competence, capacity, corruption, inefficiency and non-document of audit process. We strongly feel that this area needs special consideration by Ministry of Finance, Government of Pakistan.

4.40 CASH WITHDRAWAL FROM A BANK (DEDUCTION OF TAX) SECTION 231A

Exemption from deduction of tax under Section 231A on account of cash withdrawals from the bank account available to exchange companies duly licensed and authorized by the State Bank of Pakistan has been withdrawn and instead a reduced rate 0.15% will be applicable subject to the condition that such bank accounts are exclusively dedicated for its authorized business related transactions and certificate is issued by the concerned Commissioner Inland Revenue for a financial year mentioning details and particulars of its Bank Account being used entirely for business transactions.

There are separate rates of deduction of tax under this Section for filers and non-filers, but the reduced rate for Exchange Companies does not specify its applicability with reference to filer or non-filer.

Recommendation

The law should be amended to remove this ambiguity.

Rationale

To harmonize the law.

4.41 APPLICATION FOR ONLINE EXEMPTION CERTIFICATE

a) Manual data feeding of voluminous information relating to consignments to be imported results in wastage of time and cost associated with the human resource.

b) Once submitted, IRIS system does not allow taxpayers to amend / modify / delete application for exemption from tax collection deduction. Resultantly, in case of any error, taxpayers have to suffer for whole tax year

c) Delay / non approval (without any cogent justification) results in excess cost in the form of demurrage charges and piling of refunds.

Recommendations

a) Taxpayers should be allowed to upload file as in the case of Sales Tax returns.

b) Considering the chances of human / transposition error, provision should be made in the online system to allow taxpayers to amend / modify / delete application for exemption certification

c) Time limit of 5 days be prescribed and be followed in letter and spirit. Moreover, online system should be geared up to send weekly report to the Chief Commissioner Inland Revenue highlighting the ageing analysis of pending applications for Exemption Certificates. Moreover, taxpayers should be provided with a compliant portal to report their grievances relating to the issues being faced *while getting approval for Exemption certificates.*

Rationale

a) To simplify procedure in order to save precious time, which can then be used for core business (to increase profit and tax).

b) To accommodate possibilities for human / transposition error.

c) To facilitate genuine taxpayers by reducing the cost of doing business which may be in shape of Demurrage.

4.42 ISSUES BEING FACED WHILE E-FILING INCOME TAX WITHHOLDING STATEMENTS

a) Revision of withholding statements – Earlier an option was available for the withholding agents to revise the monthly statement under Section 165 in case there was an omission or incorrect declaration in the original statements. However, such option is not available in the withholding format on IRIS.

b) Requirement to determine finality or adjustability of taxes withheld – while reporting the taxes withheld by a withholding agent, the IRIS portal requires the withholding agent to declare in the statement whether the tax collected / deducted by him is a final tax or an adjustable tax.

c) Bifurcation of filing requirements – in almost all medium and large organizations, previously the statement for salary was being uploaded by HR department whereas the remaining data was filed by the Finance department, however, due to the merger of the two separate statements under the IRIS portal, it is now required to file the entire withholding data on the same module.

d) Issue of subsequent issuance of Exemption certificate – If a person, from whom tax has been deducted and deposited into the Government treasury, gets an Exemption Certificate subsequently then, at the time of filing monthly withholding statement, the IRIS portal does not allow the withholding agent to report tax collected / deducted from person to whom exemption certificate has been granted subsequently.

Recommendations

a) the withholding agent should be given a right to make necessary amendments to report any omission or incorrect declaration in monthly withholding statement.

b) remove the icon in the withholding statement format that requires the withholding agent to declare whether the tax collected / deducted is a final tax or an adjustable tax.

c) the withholding statement for deduction of tax from salary and for reporting deduction of tax from other than salary should be bifurcated as secrecy of salary data is a prime concern for all organization.

d) withholding agent should be allowed to report taxes collected / deducted by them. A provision should be made in the monthly withholding statements to account for subsequently granted exemption certificate.

Rationale

It needs to be appreciated that the withholding agent is merely fulfilling his obligations conferred upon him under the Ordinance and therefore, he should be properly facilitated.

Finality or adjustability of the tax withheld cannot be determined by the tax withholding agent and he should not be burdened with the responsibility to determine tax liability of the person from whom he is deducting the tax. Moreover, the person from whom the tax has been withheld is himself the best to declare whether the tax collected / deducted from his payment is a final or an adjustable tax which he will declare in his annual return.

For segregation of duties and to maintain confidentiality.

Withholding agents should be allowed to properly report taxes deducted/ collected by them.

4.43 ACCESS TO CUSTOMER INFORMATION - SECTION 165 & 165A

Insertion of Section 165 & 165A requires a general disclosure of customer information to FBR, including giving online access to the FBR to Banks' own databases.

A number of Banks have already challenged these in court and have a stay on the matter.

Recommendation

The Banking Companies Ordinance 1962, The Protection of Economic Reforms Act, 1991 etc., containing banking secrecy provisions should be amended. Accordingly, till such time the original Section 165 should be restored and removal of Section 165A as Section 176 already allows the FBR to obtain legitimate information in the case of suspected tax evasion by any particular person.

Rationale

Banks are already providing customers' information where a specific notice is received from the tax authorities under Section 176. Further these amendments are in conflict with existing provisions of the Banking Companies Ordinance, 1962 and the Economic Reforms Act 1992 relating to customer confidentiality. A number of Banks are already under litigation on the subject.

4.44 AUTOMATIC STAY - SECTION 137

Unrealistic and frivolous demands are created by the tax authorities due to pressure created by tax authorities.

Recommendation

Automatic stay of demand upto 85% for first stage of appeal and 50% till the Appellate Tribunal stage of appeal be provided (as was provided in the repealed Ordinance, 1979).

Rationale

Principles of natural justice and avoid payment burden.

4.45 RECOVERY NOTICES TO BANKS - SECTION 140

Currently banks are receiving tax recovery notices from FBR. In certain cases one notice contains information about hundreds of tax defaulters.

Recommendations

Standard procedure and time line for compliance of tax recovery notice should be introduced and a reasonable time should be allowed to the banks (say at least seven working days) for acting on such recovery notices.

The notices should not be issued till after 2 working days of the disposal of stay application, in cases where the taxpayer is in appeal and has filed an application for stay of demand.

A minimum threshold, (say Rs 500,000 or above of outstanding tax demand) should be specified before the recovery provisions can be invoked by tax authorities.

Rationale

This will reduce the hardship between the banks, FBR and accountholders / taxpayers. This will also save the banks from penalties, ligations and contempt of court proceedings from FBR as well as clients. The law does not state that the recovery notices under Section 140 should be complied with immediately upon receipt of the recovery notice.

A taxpayer has legal rights and if a stay application has been no recovery should be made till the disposal of the stay application by the competent appellate authority and two days thereafter when the copy of the order is available to the taxpayer and other stakeholders.

The compliance with recovery notices involves resources and time of the banks resulting in additional costs as such recovery notices for amounts that are not material (say. Rs 500,000) should not be issued.

4.46 TERM 'TECHNICAL' - SECTION 2(23)

The word 'technical' as used in Sec 2(23) is being misinterpreted and has been used liberally by tax authorities even for manpower services provided by operational staff of non-residents.

> *"Fee for technical services means any consideration, whether periodical or lump sum, for the rendering of any managerial, technical or consultancy services including the services of technical or other personnel, but does not include…"*

Recommendation

The word 'technical' should be defined in Section 2 of the Income Tax Ordinance 2001 based on its general interpretation.

Rationale

To avoid misinterpretation.

TECHNICAL AND EDITORIAL

5.1 EXEMPTION FROM SPECIFIC PROVISIONS - CLAUSE (46) PART IV OF SECOND SCHEDULE

This amendment was actually required through Finance Act, 2012 when Section 153(1) was amended and corresponding provisions for permanent establishment of a non-resident were transposed to Section 152(2A). Un-fortunately, this has not been given a retrospective effect.

Recommendation

Editorial amendment is required to remove the lacuna in respect of exemption to Permanent Establishment of Non-resident Petroleum Exploration and Production (E&P) Companies for supply of its petroleum products.

Rationale

To remove the lacuna in the law.

5.2 EXEMPTION FROM COLLECTION AND DEDUCTION OF TAX AT SOURCE

The exemption from collection and deduction of tax at source is available to Federal Government, A Provincial Government, Local Government, foreign diplomat, diplomatic mission in Pakistan or a person who produces a certificate from the Commissioner that his income during the year is exempt from tax under Section 231 'Cash withdrawal from a bank (Advance tax deduction)'; Section 231AA 'Advance tax on transactions in bank'; Section 236B 'Advance tax on purchase of air ticket (Domestic); 236C 'Advance Tax on sale or transfer of immovable Property'; Section 236K and clauses (89) and (90) of Part IV of the 2nd Schedule have been consolidated in Section 236O.

In the process of consolidation the non-applicability of provisions of Section 236C and Section 236K to Local Government has been withdrawn.

Further, the new Section 236O on the one hand refers to; the entire Chapter and on the other hand the words "in the case of withdrawals made by" has been used. This appears to be a drafting error in using the foregoing words.

Recommendation

Section 236O needs to be redrafted.

Rationale

To remove anomaly in the law.

5.3 TAX ON SHIPPING BUSINESS OF A RESIDENT PERSON - SECTION 7A AND CLAUSE (21) OF PART II OF SECOND SCHEDULE

Shipping business of a resident person was chargeable to tax as a separate block of income subject to fixed tax by virtue of Clause (21) of Part II of 2nd Schedule which has been omitted and transposed under newly inserted Section 7A. As a result the shipping business of a resident person is now chargeable under "income subject to separate charge" and subject to final tax.

Recommendation

The corresponding amendments in Section 4(4)(a) and 4(5) of the Ordinance have not been made. This basically means that although provision for tax on shipping business of resident person has been made in the Ordinance, but the chargeability thereof has not been catered for. Corresponding amendment in Section 4(4)(e) and 4(5) of the Ordinance should be made by inserting Section 7A. Procedure and mechanism for payment of tax u/s 7A should also be provided.

Rationale

Section 4 is basically the charge creating section for all sorts of taxes levied under the Ordinance. The amended Section 8(e), specifically provides for the procedure and mechanism for payment of tax in respect of income subject to separate charge under Sections 5, 5A, 6, 7, 7A or 7B, but the procedure and mechanism for payment of tax under Section 7A (tax on shipping business of resident person) has not been provided for.

5.4 TAX ON PROFIT ON DEBT - SECTIONS 7B AND 151

In case of an individual and association of persons the taxation of income of "profit on debt" (profit/yield/interest) has been brought under "Income subject to separate charge" from "Income subject to final tax" Income from profit on debt has been migrated to "Income subject to separate charge", the substituted Section 151(3) is therefore now redundant.

Recommendations

a) Clause (b) of sub-section of Section 151 should be omitted.

b) Procedure and mechanism for payment of tax u/s 7B should be provided for.

c) The words 7B should be added in Sections 39(5) and 115(4)

d) Clause 6 of Part III of Second Schedule should be omitted.

Rationale

- Section 4 is basically the charge creating section for all sorts of taxes levied under the Ordinance. However, the corresponding amendments have not been made in

Section 4(4)(a) and 4(5) of the Ordinance. This basically means that although provision for tax on profit on debt has been made in the Ordinance through the newly inserted Section 7B, but the chargeability thereof has not been catered for.

- The amended Section 8(e), specifically provides for the procedure and mechanism for payment of tax in respect of income subject to separate charge under Sections 5, 5A, 6, 7, 7A or 7B but the procedure and mechanism for payment of tax under Section 7B (tax on profit on debt) has not been provided for.

- Corresponding amendment in sections 39(5) to exclude profit on debt chargeable under this Section from the ambit of Section 39 ("income from other sources") has not been made. Thus profit on debt becomes chargeable under Section 7B as well as under Section 39(1)(c) in case of a person other than a company (i.e., an individual and association of persons).

- In the absence of any amendment in Section 115(4), a person exclusively deriving income from profit on debt chargeable under Section 7B has not been excluded from the obligation of filing of return of income and instead thereof filing of statement of final tax. Thus effective tax year 2016, such persons have to file a return of income instead of statement of final tax in respect of profit on debt chargeable under Section 7B.

- The newly inserted Section 7B (Tax on profit on debt) applies to every person other than a company without any distinction of being resident or non-resident. In case of non-resident person, other than a company, not having a permanent establishment in Pakistan deriving profit on debt from debt instruments, Government securities including treasury bills and Pakistan Investment Bonds, where the investment is exclusively made through a Special Rupee Convertible Account maintained with a Bank in Pakistan is chargeable to final tax under clause (5A) of Part II of Second Schedule. Thus two contradictory provisions.

- In case of non-residents, the profit on debt (other than those covered under clause (5A) of Part II of Second Schedule - mentioned above) was chargeable under Section 39 as income from other sources and formed part of the total/taxable income. Effective tax year 2016, such income of non-residents persons other than a company will fall under income subject to separate charge and will not be chargeable under "income from other sources" and will also be not included in the total/taxable income.

- Clause (36A) of Part IV of Second Schedule exempts yield or profit (profit on debt) of Behbood Savings Certificates and Pensioner's Benefits Account from deduction of tax at source under Section 151. Thus such profit on debt is chargeable to tax under the head "Income from Other sources"/Total income/Taxable Income. Under clause (6) of Pat III of Second Schedule, it is also provided that the tax payable on such profit on debt shall not exceed 10% of such profits.

  Contrary to the above provisions still on the statute book, the profit on debt from Behbood Savings Certificates and Pensioner's Benefits Account is also chargeable under the newly inserted Section 7B, which may result into payment of tax on such profit on debt in excess of 10% of such profit. Thus two contradictory provisions exist simultaneously.

5.5 REPATRIATION OF AFTER TAX PROFITS BY BRANCH OFFICES OF PAKISTANI COMPANIES LOCATED IN AZAD JAMMU & KASHMIR

Currently the definition of dividend under Section 2(19)(f) of the Income Tax Ordinance 2001 includes remittance of after tax profit of a branch of a foreign company operating in Pakistan. Same provision is available in the Azad Jammu & Kashmir tax laws, accordingly after tax profit of a Pakistani company operating through a branch in Azad Jammu & Kashmir, (being treated as a foreign company), is subject to double taxation i.e. once at the time of distribution of dividend to its shareholders by way of withholding and depositing tax in Pakistan and again at the time of repatriation by Azad Jammu & Kashmir branch to Pakistan.

Recommendation

It is recommended that effective from Tax Year 2016, the remittance of after tax profit by a branch located in Azad Jammu & Kashmir of a Pakistani company or a branch located in Pakistan of a Azad Jammu & Kashmir company should be allowed exclusion from the definition of dividend as an exclusion has already been provided under Section 2(19)(f)(iv) of the Ordinance i.e. remittance of after tax profit by a branch of Petroleum Exploration and Production (E&P) foreign company, operating in Pakistan.

Rationale

The rationale behind the proposed amendment is to prevent double taxation of after-tax profits of branch office which could otherwise be the case when these profits are remitted to Pakistan or Azad Jammu & Kashmir where the company is resident and then distributed to the shareholder of the company.

It is understood that the provision under reference was introduced for the purposes of taxation of multinationals operating in Pakistan whereas in the circumstances explained above; due to certain constitutional restrictions / embargos Pakistan and Azad Jammu & Kashmir are treated as two separate countries though if we raise the veil of these embargos they are one and the same.

5.6 MINIMUM TAX CARRY FORWARD AND ADJUSTMENT - SECTION 113

Under Section 113(2)(c), where Minimum Tax paid under sub section (1) exceeds the actual tax payable under Part I, Clause (1) of Division I, or Division II of the First Schedule, the excess amount is carried forward for adjustment against tax liability of the subsequent tax year(s).

Recommendation

An explanation should be added under Section 113(2)(c), as under:

"Explanation: For the removal of doubt it is clarified that where no tax is payable under clause (1) of Division I or Division II, of Part I of the First Schedule the amount of tax paid under sub-section (1) shall also be carried forward for adjustment against the tax liability under the aforesaid clause and Division of the subsequent tax year."

Rationale

There is an ambiguity surrounding the carry forward and adjustment of minimum tax where no tax is payable under Part I, Clause (1) of Division I, or Division II of the First Schedule, in view of which benefit of carry forward and adjustment of minimum tax paid against the tax payable under Part I, Clause (1) of Division I, or Division II of the First Schedule of the following years is being denied by field offices.

We understand that the Government has no intention to deny the facility of carry forward and subsequent adjustment of Minimum tax paid.

5.7 WITHDRAWAL OF BALANCE UNDER PENSION FUND - SECTION 156B

A pension fund manager making payment from individual pension account maintained under approved pension fund is required to deduct tax at source under Section 156B.

Under clause (23C) of Part I of 2nd Schedule the amount withdrawn from the voluntary pension fund representing the amount transferred from an approved provident fund is exempt from tax. However, the corresponding exemption from deduction of tax at source under Section 156B from such withdrawal is not available.

Recommendation

In Part IV of the Second Schedule following clause should be inserted:

> *"The provisions of section 156(B) shall not apply on the amounts withdrawn from the voluntary pension funds which are exempt from the tax under Clause (23C) of Part I of the Second Schedule of the Ordinance."*

Rationale

In the presence of exemption from taxation of said income, there remains no logic for withholding of tax on disbursement of such income.

5.8 CERTIFICATE OF COLLECTION OR DEDUCTION OF TAX AT SOURCE– SECTION 164 (2)

Under Section 164(2) a taxpayer is required to attach copies of tax payment challan(s), which has been collected or deducted from him under various provisions of the Ordinance, along with the return of income, as evidence of payment of such tax.

Recommendation

Section 164(2) should be amended so that any other equivalent document and certificate of tax collected or deducted is also acceptable as evidence of tax paid by way of collection or deduction of tax at source for claiming the credit in the return of income.

Rationale

The Institute fully appreciates and endorses the necessity and need for submissions of the challans as evidence of tax paid. However, keeping in view the prevailing ground realities, it is very difficult for the taxpayers to obtain copies of challans from the withholding agents in many cases and in particular where the tax withheld is paid through book entry or through a single consolidated challan without the details of the persons from whom it has been collected or deducted e.g., tax collected or deducted from dividend, profit on debt, export realizations, petroleum products, cash withdrawal from a bank, issuance of instruments, sale of securities (NCCPL), with motor vehicle tax, gas consumption by CNG stations, electricity consumption, telephone usage, domestic air tickets, etc. and tax collected or deducted by Governments under various provisions. Accordingly the Institute is of the view, that for the time being until each and every withholding agent complies with his obligation of providing the challans of tax collected or deducted at source, any other equivalent document and certificate of tax collected or deducted should be acceptable as evidence of tax paid by way of collection or deduction of tax at source.

5.9 PROSECUTION FOR NON-COMPLIANCE WITH STATUTORY OBLIGATIONS - SECTION 191

Under sub-section (1) non-compliance of statutory obligations results in prosecution proceedings which may result into a fine or imprisonment for one year or both and under sub-section (2) a further fine or imprisonment for two years or both if the compliance is not made within the time allowed by the court. Sub-section (2) dealing with a further fine or imprisonment or both, after the amendment made through Finance Act, 2009, provides for a maximum limit of fine of Rs.50,000 while sub-section (1) continues to remain open ended as to the quantum of fine.

Recommendation

In Section 191(1) after the word 'fine' the words 'not exceeding fifty thousand rupees' be added.

Rationale

Any law providing authority to impose fine should not be kept open ended. Such discretionary powers can arbitrarily be used by the different officials differently in the same kind of non-compliances.

5.10 DEFAULT SURCHARGE- SECTION 205(1B)

Default surcharge under Section 205(IB) is attracted, where the advance tax required to be paid under Section 147(4A) or Section 147(6) [estimate of advance tax liability] is less than 90% of the tax chargeable for the relevant tax year.

Recommendation

In Section 205(1B) the words "the first day of April" be substituted with "the day on which

last instalment of advance tax was due under sub-section (5A) of Section 147".

Rationale

Section 147(4A) and Section 147(6) permits to estimate the advance tax liability any time before the last instalment is due. Thus if there has been a short payment, the effective date of short payment is when the last instalment was due i.e., 15th of June for Normal tax year and 25th December for Special tax year, and accordingly for the purposes of calculation of default surcharge the effective commencing date is 15th of June or 25th of December.

Contrary to the above, Section 205(1B) provides for calculation of default surcharge from 1st April.
It is unfair and unjust to charge the default surcharge from 1st April instead of actual date of default which is 15th June and 25th December 25, as the case may be.

5.11 ELECTRICITY CONSUMPTION (COLLECTION OF TAX AT SOURCE) - SECTION 235(4)

In Section 235(4) threshold of Rs.30,000 of each electricity bill is prescribed. In case of non-company taxpayer, tax collected along with electricity bills is a minimum tax where the monthly bill amount does not exceed Rs.30,000 and adjustable tax where the monthly bill amount exceeds Rs.30,000.

Recommendation

An annual threshold of Rs.360,000 on total expenditure of electricity should be prescribed for the purposes of determining whether the annual tax collected is minimum tax or adjustable tax.

Rationale

Such tax collected during the year is partly minimum tax and partly adjustable tax depending upon the each month bill amount. Accordingly, each and every bill for a month has to be seen to establish which is the 'minimum tax" and which is the 'adjustable tax'. It is not a simple job, both for the taxpayer and the department, and it becomes more difficult where more than one electricity connection is involved.

5.12 EXEMPTION OF INCOME OF WPPF - CLAUSE (66) OF PART I OF SECOND SCHEDULE

Income of the Workers' Profit Participation Fund is exempt under the WPP Fund Act which was accepted under the Ordinance by virtue of Proviso to Section 54 of the Ordinance as it stood before an amendment brought in through the Finance Act, 2008.

However, through the Finance Act, 2008 the proviso to Section 54 of the Ordinance was omitted. As a result exemption provided to the income of the WPP Fund under the WPP Act lost its applicability, which appears contrary to the entire Scheme.

Recommendation

A corresponding amendment should be made giving exemption to the income of WPP Fund established under the WPPF Act. Accordingly, it is proposed that the following sub-clause be reinserted in Clause (66) above after sub-clause (xxiii):

> *"(xxvi) Workers Participation Fund established under the Companies Profits (Workers Participation) Act, 1968."*

Rationale

The WPP Fund itself is not an entity engaged in any profit earning activity for the reason that the sums available to it are either to be paid to the workers or deposited with the Government. It is for this reason that the relevant Act provided exemption to a WPP Fund and such exemption was also protected under the Income tax law.

The amendment in Section 54 of the Ordinance as discussed above jeopardized a number of entities which were exempt from Income-tax under various statutes other than the Income tax law. Accordingly, certain sub-clauses were inserted in Clause (66) of Part I of the Second Schedule to the Ordinance granting exemption from Income Tax to entities which were enjoying such exemption under respective statutes after the proviso to Section 54 of the Ordinance was withdrawn. However, due to an oversight the exemption of income of WPP Fund could not find its place in Clause (66) of Part – I of the Second Schedule.

It may also be noted that Salient Features of Budget 2012 indicated that exemption for WPPF is provided in Finance Bill, however it appears to have been inadvertently escaped the corresponding amendment in law. Clause (14) of Salient features of Finance Bill 2012 states:

> *"The income of the Workers Profit Participation Fund (WPPF) is exempt under the Companies Profit (Workers Participation) Act 1968. However Income Tax Ordinance does not recognize this exemption. In order to streamline and to remove the lacuna, it is proposed that the exemption to WPPF be granted in the Income Tax Ordinance, 2001".*

5.13 REDUNDANT CLAUSES (56B), (56C), (56D), (56E), (56F) AND (56G) OF PART IV OF SECOND SCHEDULE

Under clause (56B) of Part IV of Second Schedule the rates of minimum tax prescribed in order to opt out of final tax regime are same as of the final tax. Thus, there is no incentive for a taxpayer to opt out of finl tax regime in respect of import of goods.

Under clauses (56C), (56D), (56E), (56F) and (56G) of Part IV of Second Schedule the rates of minimum tax to opt out of final tax regime are marginally less than the rates of applicable final tax.

Under clauses (56B), (56C), (56D), (56E), (56F) and (56G) of Part IV of Second Schedule a taxpayer can opt out of final tax regime subject to filing of return of income along with

accounts and documents as may be prescribed. However, the accounts and documents to be furnished along with the return for this purpose have not yet been prescribed.

Recommendation

- Clause (56B) should be omitted being redundant or alternatively the rates of minimum tax should be reduced (being less than the rate of final tax);
- The rates of minimum tax for opting out of final tax regime should be reduced;
- The accounts and documents to be furnished along with the return for this purpose should be prescribed.

Rationale

Final tax regime promotes undocumented economy and the Institute appreciates the provisions, which will promote reverting to normal tax regime. However, the marginal incentive for opting out of final tax regime with fear of being selected for audit is not enough to attract taxpayers to opt out of final tax regime. This fact, can also be verified from the records that how many taxpayers have opted out of final tax regime under these clauses or other similar provisions in the past.

5.14 WORKERS WELFARE FUND ORDINANCE, 1971

One of the most common issues under litigation at all stages is the amendments made in 2008 in the WWF Ordinance, which needs to be considered in depth with reference to the purpose and objective of this levy.

The first issue is the inclusion of "establishment" to which the West Pakistan Shops and Establishment Ordinance, 1969 applies. We believe this inclusion is against the purpose and objective of levy of WWF.

The second issue is the definition of "Total Income" given in the WWF Ordinance. This covers only two situations where the return of income is filed or statement of final tax is filed. This does not cover, where both return of income is filed as well as statement of final tax is filed.

The third issue is the use of words "declared income as per the return of income", which is misleading as both total income and taxable income are declared in the return of income. This has more significance with the change in the definition of total income to include exempt income as well.

Similarly, the use of words "profit (before taxation or provision for taxation) as per accounts" is also misleading since profit as per accounts may include income exempt under the Income Tax Ordinance, 2001, as well.

Lastly, the concept of higher of the accounting profit or declared income is against the norms of equity. Mainly the difference between the accounting profit and declared income

is on account of accelerated depreciation, which is basically the timing difference. In earlier years the accounting profit is higher and taxable income is lower, while in subsequent years the accounting profit is less and taxable income is higher. Resultantly, the effect of timing difference is not taken into effect while charging WWF. In case of Minimum Tax and Alternative corporate tax the timing difference concept is catered for by way of carry forward and adjustment against the subsequent tax liability.

INDIRECT TAXES

POLICY ISSUES

6.1 HARMONIZATION OF FEDERAL AND PROVINCIAL INDIRECT TAXES

With the promulgation of tax laws in the provinces without corrective amendments in the federal indirect tax laws and consultation between the provinces, numbers of issues are now being faced by the taxpayers and revenue authorities.

Recommendations

We propose a round table conference to be arranged by ICAP of federal and all provincial revenue authorities to discuss and ultimately resolve these issues for effective management and expansion of tax base.

Following four major steps may resolve many issues and can bear immediate results:

i) Revenue authorities should decide the basis of levy of indirect tax which can be ORGINATION or TERMINATION, to establish jurisdiction of taxation of services;

ii) Withholding tax on indirect taxes should be abolished;

iii) One return may be filed with identification of provincial head of account and direct deposit of share of tax of each province; and

iv) Central directorate of audit with representation from each province and FBR.

Rationale

To avoid double taxation.

6.2 HIGH RATE OF TAX

Present standard rate of 17% Sales Tax is a bottle-neck in inducing people to come within tax net besides also contributing towards inflation.

Recommendations

Standard tax rate should be reduced to 15% and should further gradually be reduced to 10% in the subsequent years.

We are cognizant that reduction of tax rate will result in significant decrease in Government's revenues. Hence, in order to bridge the potential revenue gap as a result of slash in tax rate, we recommend the following measures:

- Exemptions presently available under 6th Schedule of the Act and through various SROs should be minimized and unwarranted subsidies should be done away with;

- All taxable goods / activities should be taxed without any threshold, i.e., across the board;
- Zero ratings and reduced ratings awarded to certain sectors / classes of goods should be rationalized and accordingly minimized;
- Proper administration in order to avoid revenue leakages and inadmissible refunds;
- Government should move towards automation of data, research and analysis of various sectors of economy and their respective contribution to tax revenue through specialized techniques;
- Government should strengthen its audit capacity both at field formation and at the Board level; and
- Media campaign regarding Benefits of Registration and Filers, with success stories from businessmen.

Rationale

The lower tax rate will encourage the unregistered taxpayers to get themselves registered so that they can avail the benefits of input adjustment which is currently not available to unregistered persons. Moreover, the same will serve as a step towards documented economy.

6.3 PRESUMPTIVE / VALUE ADDITION / FIXED TAX SCHEMES

Presently, certain sectors / goods are being taxed under Presumptive / Value Added / Fixed Tax Schemes.

Recommendations

It is proposed that all Presumptive / Value Addition / Fixed Tax Schemes should be abolished and all such sectors / goods may be brought under the uniform tax regime.

Rationale

To bring harmony in the tax system in line with the international best practices.

6.4 INCENTIVE FOR GENERAL PUBLIC AND REGISTERED PERSONS

Presently no additional benefits / rewards are being given to compliant registered persons dealing with registered and organized sectors. This approach is encouraging Sales Tax evasion by unregistered sectors. Section 56C is present in the ST Act, under which the Board may prescribe prize schemes to encourage general public to make purchases from registered persons issuing tax invoices, however, till to date, no such scheme has been announced by the Board.

Recommendation

Incentive may be offered to general public as well as registered persons by announcing a scheme in this respect, if they deal only with registered and organized sectors. The incentive for registered persons may be in the shape of fixed or variable tax credit(s) at the end of the year.

Rationale

To promote registration and dealing with registered and organized sector.

6.5 DUAL TAXATION

Federal Excise Duty (FED) is leviable on specified goods and services under the Federal Excise Act, 2005. It should be appreciated that the right to tax on services under the Constitution of Pakistan rests with the provinces. In the past, the provinces did not have the means of administration and collection of sales tax on services, consequently, Federal Government had to administer the collection of sales tax on their behalf.
However, the provinces have set-up their own Revenue Board Authority to administer and collect sales tax as under:

- Sindh Revenue Board (SRB) through the Sindh Sales Tax on Services Act, 2011 with effect from 01 July 2011.

- Punjab Revenue Authority (PRA) through the Punjab Sales Tax on Services Act, 2012 with effect from 01 July 2012.

- Khyber Pakhtunkhwa Authority (KPKA) through the Khyber Pakhtunkhwa Finance Act, 2013 with effect from 01 July 2013.

- Balochistan Revenue Authority(BRA) through Balochistan Sales Tax on Services Act, 2015 with effect from July 1, 2015

We note that the FED law, covering service, still remains in force in spite of the fact that the sales tax on services is being taxed separately by the provinces of Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan under their own provincial legislations.

Recommendation

FED should be confined to goods only and all provisions relating to services be eliminated.

Through the Finance Act, 2014, a positive amendment was made and telecommunication services which are taxable under the respective provincial sales tax laws have been excluded from the purview of the FED. Accordingly, it is recommended that FED on all other services which are taxable under the sales tax laws of Sindh, KPK, Punjab and Balochistan be abolished on same lines.

After deleting the taxable services from the FED Act, 2005, a clarification may be issued that there will be no demands created by the FBR on account of sales tax that is payable

in the respective provinces and that all existing demands already created stand null and void. This would enable the taxpayers to withdraw the appeals already filed on the matter of dual taxation at various appellate forums.

Rationale

The continued existence of the FED law results in exposure to dual taxation. The FED law covering services should no longer remain in force in the Provinces since the provinces have their own Revenue Board/Authorities and Provincial legislation to administer and collect sales tax in the respective Provinces.

Moreover, the Federal Board of Revenue through its field offices is attempting to tax the services and banking, insurance, franchise, etc. at the Federal level in spite of the fact that sales tax is being paid at the Provincial level. This results in double taxation and consequently there are numerous appeals pending against the duplicate imposition of sales tax on services.

6.6 UNDER INVOICING

Across the board massive under invoicing and dumping of imported products has been increasing. Information regarding values at which various custom check posts clear import consignments is not publicly available. This encourages unscrupulous importers to under-declare the value of consignments to evade government revenues. Moreover, the information regarding the Sales Tax and FED deposited by various units is not publicly available. This leads to massive evasion of Sales Tax and FED.

Recommendations

- Values at which import shipments are cleared through PRAL or CARE need to be publicly available.
- Depending upon industry to industry, the input values be fixed for imports e.g. on the basis country of origin, weight, volume etc. after discussion with the stakeholders.
- For items prone to under invoicing and mis-declaration, FBR should designate one or two ports (including the dry ports) for clearing of import consignments. This will allow better monitoring of the import consignments where chances of mis-declaration are on a higher side.
- To keep confidentiality, names of the suppliers may be withheld.
- Additionally, the old Customs General Order 25 needs to be revived with a provision that local manufacturers be given the option to buy at a 15% premium, any consignment which appears undervalued.
- Sales Tax and FED deposited by local manufacturers and commercial importers should be published as was the practice in the past.
- Like on the income tax side, Taxpayers' Directory should also be published for Sales Tax, FED and Custom Duty.

Rationale

Transparency in collection of taxes will discourage mis-declaration, evasion of taxes and duties help industry to fairly compete with unscrupulous imports and also the Government to benefit from the increased indirect taxes revenues. It will also help in accountability of the customs staff and will reduce the incidence of Sales Tax & FED evasion and increase government revenues.

6.7 REFUND AND ELECTRONIC INVOICES

The biggest element of corruption in sales tax exists in processing and sanctioning of "refunds". Corruption starts where the supplier purchases invoice without any supply; commonly known as flying invoices and the claims refund against such invoice.

In order to curb such suspicious and unwarranted practices, the legislature had introduced Section 8(1) (ca) & 73 and made changes in registration rules. However, these provisions have become a source of hardship for the genuine businesses instead of the target for increasing tax-net i.e., unscrupulous elements.

Recommendations

In order to reduce the risk of claiming inadmissible input tax, the use of electronic invoicing should be promoted in compliance with Chapter XIV of the Sales Tax Rules, 2006. In this case, invoices issued by supplier will be transmitted electronically to the buyer and FBR simultaneously. Further, sales tax return will also be updated on real time basis along with issuance of tax invoice. This process will also be helpful for companies which have a large customer / consumer base.

Rationale

To reduce revenue leakages through inadmissible inputs.

6.8 E-INVOICING

Currently there is no incentive for individuals in the form of tax credits or reduced rates of tax if they obtain computerized invoice at the time of purchase.

Recommendation

Computerized sales tax invoicing to individuals should be rewarded by the Government.

Rationale

To motivate individuals to insist for a proper sales tax invoice for goods and services purchased / acquired by them to promote documentation of the economy.

6.9 APPEAL EFFECTS

As per Section 124A of the Ordinance where any issue is decided by the Appellate Tribunal

Inland Revenue or the High Court, the Commissioner may follow such decision in any assessment pending before him until that order or decision is reversed by a superior forum.

Recommendation

It is suggested that similar provision should also be introduced in the ST Act.

Rationale

To facilitate registered persons by bringing procedural harmony between Sales Tax and Income Tax Laws.

6.10 REGISTRATION UNDER SALES TAX

By virtue of Rule 5A of Sales Tax Rules, 2006 temporary registration for the period of sixty days can be granted by sales tax authorities to the manufacturers who intend to import machinery within 72 hours of filing of the application. However the ambit of Rule 5A is quite restrictive and does not offer identical benefit to the prospective manufacturer where plant / machinery is procured locally.

Recommendation

The facility of temporary registration should also be allowed to prospective manufacturer who plans to acquire plant/machinery from local market.

Rationale

To promote industrialization.

6.11 REVIVAL OF SETTLEMENT COMMISSION

In the Year 2004, the Government introduced the concept of Alternative Dispute Resolution (ADR) in Sales Tax Laws for resolution of sales tax disputes between the tax department and taxpayers. Later on, the ADR mechanism was also brought in income tax, excise duty and customs laws.

The ADR model practically lost its efficacy when the FBR started exercising its overriding / veto powers to undo the recommendations of ADR Committees. This way, the ADR model has virtually become inviable and unfeasible for the aggrieved taxpayer(s).

Nevertheless, in view of the heavy back log of cases with the Courts and the consistent failure of departmental cases at appellate fora, a system should be introduced not only to secure revenue but to reduce the taxpayers' tendency of approaching Courts for redressal of their grievances.

Recommendation

The Institute recommends an Indirect Tax Settlement Commission (ITSC) should be

formed in the Act on the same pattern as ITSC was in vogue prior to promulgation of Finance Ordinance 2000.

Rationale

To curb the ever increasing and never ending litigation & disputes between taxpayers and tax department and to settle tax disputes out of court in a way to improve the government inflows and to curb litigation cases due to which tax demands worth billions of rupees is stuck up since long.

6.12 TAXPAYERS AND PARLIAMENTARIANS' DIRECTORIES

The institutes appreciates that the income tax directory of taxpayers and parliamentarians' directories are being published; however, no such directories are being published for indirect taxes.

Recommendation

The Institute recommends that indirect tax directories be published.

Rationale

This will promote transparency.

SALES TAX ACT, 1990

7.1 TIME OF SUPPLY - SECTION 2(44)

'Hire purchase' transaction involves periodical instalments received/earned over a period of time. Currently, Sales Tax is being charged on full amount at the time of signing of hire purchase agreement.

Recommendation

Definition of 'time of supply' may be amended and tax should not be levied at the time of signing of HP arrangement. Instead, tax should be levied at the time when instalment is effected / paid. Further, the element of interest embedded in such instalment should also be excluded for assessment of sales tax.

Rationale

Charging sales tax on full amount at the signing of hire purchase agreement is not justified and is in conflict with the definition of value of supply which states that it is the consideration which the supplier receives from the recipient for the supply.

7.2 SALES TAX ON ADVANCES - SECTION 2(44)

Prior to amendment made in Section 2(44) of the ST Act through the Finance Act 2013, Sales tax was levied at the time of actual delivery of goods regardless of time of payment. Subsequent to the amendment, sales tax is also being charged at the time of advance payment.

Recommendation

It is recommended that sales tax on advances should be done away with.

Rationale

Due to this change, no other benefit other than slight timing difference accrues to the Government; while the taxpayer has to bear unnecessary compliance costs. Application of sales tax on advances causes serious accounting issues resulting in unnecessary reconciliations, and also leads to discrepancies in CREST causing hardships to taxpayers.

7.3 FURTHER TAX BE PART OF OUTPUT TAX – SECTION 3(1A) READ WITH SECTION 7

Further tax has always been part of output tax in the past. However through the amendment made in Section 7 vide Finance Act 2014, 'Further Tax' is now not part of output tax leading to higher mandatory payment pursuant to Section 8B. Moreover, it is not adjustable against overall liability of the registered withholding tax agents and is directly payable to the exchequer.

Recommendation

Further tax should be treated as part of output tax.

Rationale

To avoid piling up of refund and reduce the high cost of doing business in Pakistan for registered sector.

7.4 FURTHER TAX - PERSONS NOT LIABLE TO BE REGISTERED

In terms of the judgement pronounced in Writ Petition 17639/2013 dated 20 March 2014 by the Lahore High Court, the FBR had issued a General Order 68 of 2014 (STGO) whereby framework was prescribed to ascertain whether a particular business was not liable to registration under Section 14 of the ST Act and accordingly, Further Tax will not be chargeable. However, such STGO is ambiguous and does not address the issue in the manner as envisaged in LHC's decision.

Recommendation

The mechanism laid down in STGO 68 should be spelled out clearly and in the easiest manner. The Institute recommends that persons not engaged in any activity taxable under sales tax law (e.g. service providers falling under the respective provincial sales tax laws and FED, NGOs, educational institutions, hospitals, etc.) may be exempted from further tax, subject to the condition that they obtain related exemption certificate from the Commissioner having jurisdiction certifying the nature of business of such person.

Rationale

Equitable taxation for persons otherwise exempted from ST Act.

7.5 TIME PERIOD FOR CLAIMING INPUT TAX/REFUNDS - SECTION 7(1) AND SECTION 66

Presently, the time period for claiming input tax paid on purchase is six months from the end of the month in which purchase was made. The Institute is of the view that time limitation imposed by the law is very short.

Recommendation

The time period for claiming input tax on purchases should be increased to one year from the present six months.

Rationale

Increase in time period for claiming input tax will facilitate registered persons, especially in case of inadvertent error.

7.6 TAX CREDIT NOT ALLOWED - SECTION 8 (1) (a)

The tax auditors have been objecting adjustment of input tax paid by the taxpayer on electricity and gas consumed in residential blocks of the factory where its production facilities are located. The tax department is of the view that this area falls under the mischief of Section 8(1)(a) and thus such claims of input tax are inadmissible.

Recommendation

It is suggested that suitable amendments may be made to allow input tax on electricity and gas consumption within residential colonies of the registered person, particularly where round the clock supervision of production activities is indispensable and plants are based at remote locations.

Rationale

To allow genuine taxpayers to claim input tax, being their prerogative.

7.7 TAX CREDIT NOT ALLOWED - SECTION 8(1) (ca)

In terms of this provision, a taxpayer is not entitled to claim input tax paid on the goods (or services) in respect of which sales tax has not been deposited in the Government treasury by the respective suppliers.

Recommendation

Section 8(1) (ca) should be deleted.

Rationale

The matter was challenged in the Honorable Lahore High Court (LHC), in a petition W.P.No.3515/2012 filed by D.G Khan Cement Company Limited. The LHC allowed relief and declared the provision as unconstitutional.

7.8 INPUT TAX CREDIT ON BUILDING MATERIALS – SECTION 8 (1) (h)

In terms of Section 8 (1)(h) and SRO 490/2004 read with SRO 450 dated May 27, 2013, input tax paid on acquiring building and construction materials is not allowed except that used directly in the production or manufacture of taxable goods. The department disallows input tax paid on building materials even in cases where of construction of projects assisting the taxable activity.
Recommendation

Input tax on building materials should be restored and discretionary authority vested with the Department be withdrawn and only those items be disallowed which are specifically stated under the law.

Rationale

Such restriction on legitimate tax credits discourages investment in large projects that will further reduce the economic activity in the country. Input tax on building materials, if allowed under the law, will reduce the cost of projects, especially alternate energy projects which will also encourage investment, and in the long run, beneficial for revenue generation for the Government .

7.9 INPUT TAX CREDIT ON PROVINCIAL SERVICES – SECTION 8 (1) (j)

Through the Finance Act, 2015, clause (j) has been inserted in Section 8(1), whereby a registered person is not entitled to claim input tax on services (including reduced rate services) on which input adjustment is barred under the respective provincial sales tax laws.

Recommendation

The above amendment in 8 (1) (j) should be deleted

Rationale

There was no rationale of the above amendment as it is against the VAT principle and any change in provincial laws will affect the federal input tax as well.

7.10 ADJUSTABLE INPUT TAX - SECTION 8B

Presently, Section 8B restricts the claim of input tax up to 90% of the output tax and requires mandatory payment of 10%.

Recommendations

Section 8B should be removed from the statute. Alternatively the mandatory payment of 10% should be reduced to 5%.

Rationale

Any provision deferring the claim of legitimate input tax/refunds of a registered person is not justifiable in any fiscal law.

7.11 DEBIT & CREDIT NOTES IN CASE OF BAD DEBTS - SECTION 9

Currently there is no provision in the ST Act to recognize sales tax which becomes a bad debt subsequent to supplier's payment thereof to the exchequer. Moreover, adjustment on account of debit / credit notes is available to the extent of 180 days, which is not sufficient.

Recommendation

The adjustment of genuine bad debt be allowed to the supplier and the minimum time period for issuance of debit / credit notes should at least be extended to 365 days.

Rationale

In the present era, where technology checks can be placed, as long as the registered person is able to prove the genuineness of original and revised transaction, no time limits may be imposed upon him under the rules for issuing credit and debit note or enjoying related tax credit/ adjustment. Further, Bad debts is the ground reality in business world and hence be allowed.

7.12 SHOW CAUSE NOTICES - SECTION 11

Show cause notices are issued to taxpayers under Section 11 of the ST Act and Section 14 of the FED on frivolous and intangible basis. This leads to weak assessment proceedings and adverse appellate orders against such assessments.

Recommendation

Respective sections should be amended to the effect that unless definite information of any tax evasion, illegal input tax adjustment or refund is available with the tax officer, show cause notice should not be issued.

Rationale

This way, show cause notices will be issued with reasonable strength and assessment orders will stand the test of appeal.

7.13 DISCHARGE OF LIABILITY AT SUBSEQUENT STAGE – SECTION 11

In plethora of judgements of superior Courts, it is now a settled principle of law that if any liability for short paid tax is subsequently discharged, than the same cannot be recovered from the taxpayer again, as it would tantamount to double taxation However, unfortunately, such provision is not part of the ST Act.

Recommendation

It is suggested that sub-section 4A be inserted in Section 11 as follows:

> *"Where at the time of recovery of sales tax under sub-sections (1), (2), (3) or (4), it is established that the sales tax that was required to be paid or deducted has meanwhile been paid by that person or recovered from the supply chain, no recovery shall be made from the person who had initially failed to pay or deduct the sales tax or had paid or deducted short amount sales tax".*

Rationale

The Sales Tax law requires the payer to withhold certain amount of sales tax from the recipient and this amount is directly required to be deposited by the payer to the credit of the recipient.

In instances where there is a default in withholding tax, the provisions of law authorize the tax authorities to recover the amount of sales tax not withheld. However, it is possible that the recipient may have deposited the entire sales tax himself at the time of filing his sales tax return for that tax period, therefore it is being suggested that the recovery of tax should be restricted to such cases only where the sales tax in question is clearly unpaid by both parties. The amendment will avoid double taxation.

7.14 DE-REGISTRATION, BLACKLISTING AND SUSPENSION OF REGISTRATION - SECTION 21 (2)

The law provides that before blacklisting or suspending any taxpayer registration, the Commissioner will follow the relevant procedure as prescribed under the notification to be published in the Gazette.

Recommendation

Despite lapse of considerable time, the said notification prescribing the procedure for blacklisting and suspension has not been issued by the FBR. Accordingly, the powers exercised under Section 21(2) have been discarded by the Appellate fora. It is therefore recommended that the relevant notification be issued.

Rationale

Application of the law should be in the manner as enacted by the Legislature.

7.15 TAX CREDIT NOT ALLOWED SECTION 21 (3)

If a registered person is blacklisted, the refund or input tax credit claimed against the invoices issued by him even prior to prior blacklisting / suspension is not admissible.

Recommendation

Section 21(3) should be rationalized and input tax should not be deprived off if:

a) buyer holds valid tax invoice;

b) supplier's name was appearing in the Active Taxpayers' List at the time when purchases were made; and

c) payments were made through banking channel in compliance with Section 73 of the ST Act.

Rationale

A registered person should not be deprived of his legitimate right of input tax if he fulfills all the above mentioned three conditions.

7.16 MULTIPLE AUDITS – SECTIONS 25 and 38

Section 25 and Section 38 empower the tax authorities to conduct sales tax audit / investigation. In terms of Section 25, an audit of a registered person may be conducted once in a year. On the other hand, Section 38 empowers the tax department to conduct investigation of registered persons without any time limitation and allied framework.

Recommendations

No audit may be initiated unless specific scope, guidelines and mechanism of Investigation is available in the law. Likewise, if detailed investigation of a registered person has already been conducted under Section 38, there should be no need to conduct audit of a registered person under Section 25.

Rationale

Clarity and elimination of taxpayers' undue harassment.

7.17 POWER TO ARREST - SECTION 37A

Presently, Inland revenue officers are authorized to execute arrest of any person if that officer has on the basis of material evidence has reason to believe that such person has committed a tax fraud or any offence warranting prosecution under ST Act. Moreover, the powers given to officers also include powers to arrest any director of the company if the officer has reasons to believe that such director or officer is personally responsible for actions of the company contributing to tax fraud.

Recommendation

This Section should only be applicable where the case of tax fraud has already been established at the stage of Order-in-Appeal. Alternatively, the amendment to be made in Section 37A in line with the amendment made in Section 8A through Finance Act 2015 and the burden to prove the allegations should be on the tax department.

Rationale

In order avoid harassment to the genuine taxpayers.

7.18 LIABILITY FOR PAYMENT OF TAX - SECTION 58

Under the existing law a person who was a shareholder representing even one share can be held responsible for the liability of the company. Similarly a person who is a nominee director or employee director can be held responsible for the liability of the company.

Recommendation

In the Ordinance, such matters are covered under Section 139 thereof which comprehensively deals with the liability both in case of company and association of

persons. Section 139 needs to be replicated in the ST Act on the similar lines.

Rationale

To protect interest of the minority shareholders.

7.19 INADMISSIBLE INPUT TAX - SECTION 73

a) In case of payment not made by the buyer within 180 days, his corresponding input tax becomes inadmissible. It appears to be an irrational proposition for the government to impose such restriction on the buyer considering the fact that related sales tax is already paid by supplier into government treasury at the time of issuing tax invoice.

b) The law also does not take into account transactions where payments are made by some other person / guarantor on behalf of the buyer.

c) Part payment of invoice, to the extent of sales tax, is also not catered in the statute.

Recommendation

It is recommended that in line with Income Tax circular 1 of 2009, credit on payments, made through adjustments of Receivable against Payable should be treated as payment for the purposes of Section 73 of the ST Act.

Rationale

To accommodate payments terms and conditions based on industry practices and business norms. In today's environment, it is common that purchases and sales are being made from / to same party. Hence ledger adjustment should be allowed so that taxpayer does not have to go through hassle of actual payments.

7.20 CONDONATION OF TIME LIMIT - SECTION 74

In terms of Section 74 of the ST Act, the Board and the Commissioner is allowed to condone the time where any timeline has been prescribed under any provision of the law. However, e-FBR web portal does not allow adjustment of purchase invoice or debit / credit note where manual condonation has been granted by the Board or the Commissioner, as the case may be.

Further, the Board quite often rejects condonation applications even in cases where clear and specific report has been furnished by field formations quoting hardship factors in the application.

Recommendation

We suggest that a detailed mechanism may be laid down by the Board regarding condonation cases to avoid malpractices, blatant use of discretionary powers.

Rationale

To avoid wastage of time, energy and cost of the affected taxpayer.

7.21 CONDONATION FOR COMPLIANCE - SECTION 74

Pursuant to Section 74 read with SRO 394(I)/2009 dated 21 May 2009, the Commissioner may condone 1 year lapse in any compliance related issue.

Recommendation

Powers given to Commissioner for condonation may be extended to three years from existing one year.

Rationale

To facilitate taxpayers by giving powers to Commissioner to condone 3 years lapse in any compliance related issue.

7.22 SALES TAX AT THE RETAIL PRICE - THIRD SCHEDULE

On items included in 3rd Schedule of the ST Act, sales tax is recovered from the manufacturer at the retail price which is against the principles of VAT.

Recommendation

Items specified in the Third Schedule may gradually be deleted.

Rationale

Collecting Sales Tax for the whole supply chain is against the concept of VAT.

7.23 EXEMPTION TO CHARITABLE INSTITUTES - SIXTH SCHEDULE

In the Income Tax Law, a mechanism is available to provide income tax exemption to charitable institutions. However, there is no concept of allowing exemption / zero-rating of sales tax for charitable institutions except the exemption available under clause 52A of Sixth Schedule to the ST Act.

Recommendation

We recommend that identical mechanism may be put in place for grant of exemption/ zero rating under the ST Act.

Rationale

To provide identical exemption as provided under the Ordinance.

7.24 MURABAHA TRANSACTIONS

Under the S.R.O 445 (1)/2004 dated June 12, 2004 goods delivered under a Murabaha financing arrangement to or by a bank or a financial institution approved by the State Bank of Pakistan or the Securities and Exchange Commission of Pakistan does not constitute supply and therefore not chargeable to sales tax.

Recommendation

Goods delivered under other Islamic modes of financing approved by the SBP and SECP should also be excluded from the purview of sales tax.

Rationale

Sales Tax is chargeable on goods supplied under other Islamic modes of financing arrangements. This lack of specific exclusion in law, to goods/commodities sold / purchased by Islamic banking institutions (IBIs) while extending financing to their customers under Islamic modes is hindering growth of Islamic Banking. Therefore, an appropriate amendment is proposed.

7.25 SALES TAX ON TOLL MANUFACTURING CHARGES BY FEDERAL AND PROVINCIAL GOVERNMENTS

The Federal Government has been collecting sales tax on toll manufacturing charges as it has repeatedly defined/clarified that the toll manufacturing activity falls under the definition of manufacturing. The Federal Government has further strengthened its stance over collection of sales tax on toll manufacturing by inserting clause (d) in Section 2(33) through the Finance Act, 2015; followed by FBR clarification letter dated January 8, 2016 to KCCI that only the Federal Government is authorized to charge and collect sales tax on processing of goods owned by other persons.

Similarly, the Punjab and Sindh governments have also subjected the toll manufacturing activity as chargeable to tax. This tantamount to duplication of sales tax as the taxpayer is being pressurized to pay sales tax to both federal and provincial governments.

Recommendation

It is proposed that Ministry of Finance should take up the matter with Provincial Governments and reconcile their differences.

Rationale

Taxpayers involved in toll manufacturing may not be subjected to double taxation.

7.26 E-FILING OF SALES TAX RETURN

For the past many years, Sales Tax returns were updated each year to account for budgetary or any other regulatory changes without prior trail / tests to make sure that the return works as desired.

Recommendation

It is suggested that whenever new sales tax return is uploaded on the web portal, trial tests should be performed by the FBR officials.

Rationale

To make sure that the portal works as desired and the e-filing of Sales Tax Return is made without any hassle and technical problem.

SALES TAX RULES, 2006

8.1 INVENTORY RECORD FOR GOODS DESTROYED - RULE 23

Rule 23 of the Sales Tax Rules 2006 requires that when goods are returned by the buyer on the ground that the same are unfit for consumption, the same to be destroyed by the supplier after obtaining permission from the Commissioner.

Practically speaking, the tax department does not have capacity, technical ability and human resource to carry out work which would lead to permission from the Commissioner.

Recommendation

It is suggested that taxpayer should be allowed to incinerate such obsolete inventory after obtaining a certificate in lieu of approval from the Tax department from an independent professional e.g. Chartered Accountant.

Rationale

To provide fast track solution to taxpayers' genuine problems, and to rescue the department from insignificant matter.

8.2 UNADJUSTED INPUT TAX - RULE 36

In terms of Sales Tax Rules 2006, unadjusted input tax has to be carried forward for a minimum 12 months' before it may be applied as refund.

Recommendation

Time limit of refund of excess carry forward input tax may be reduced to six months in respect of unadjusted input tax.

Rationale

This will avoid blockade of fund and facilitate particularly new businesses.

8.3 INITIATION OF RECOVERY ACTION - RULE 71

By virtue of Section 45B of the Act, a registered person aggrieved by any decision, may file an appeal within 30 days from the date of receipt of such order. However, on the contrary, under Rule 71 of Sales Tax Rules 2006, the proceedings for recovery of impugned tax may be initiated after 30 days from the date of order.

Recommendation

Rule 71 may be amended to provide commencement of recovery proceedings after 30 days from the receipt of order.

Rationale

To keep harmony between Act and Rules and in the spirit of natural justice.

8.4 SALES TAX WITHHOLDING RULES, 2007

The above Rules are applicable when a registered person makes payment to registered as well as unregistered taxpayers.

Recommendations

- It is recommended that STWH rules may be rescinded or amended to the make these applicable to payments to unregistered person only.
- Without prejudice to the above, there should be token WHT rate of 1% for payment to registered person as well (like for payment to unregistered person).
- Similarly, a minimum threshold for sales tax withholding should be introduced in lines with the Income Tax Law.
- Companies should be exempted from withholding of sales tax.

Rationale

- The aforesaid amendment on one hand increases the workload of registered persons as they are required to collect STWH information from their registered suppliers. Secondly, they are burdened to furnish challans after depositing of sales tax withheld.
- Registered parties are timely discharging their all tax liabilities. Furthermore STWH being adjustable tax, FBR has not taken any benefit from STWH from registered parties, to the best of our knowledge.
- Core reason behind its introduction was to gather data of potential tax payers and minimize undocumented economy. The purpose of these sections was not to generate more revenue.
- Withholding tax from unregistered persons is being shown in bulk in the return so the idea of broadening the tax base has not been served.
- Higher WHT rate for registered person (viz a viz unregistered person) is leading to increase in cost of doing business for the formal sector.
- These Rules are not applicable for unregistered person (as a payer) and hence discouraging Registration.
- This will facilitate those registered persons who have already excessive unclaimed input tax/refunds, to obtain exemption from sales tax withholding so that their sales tax refunds are not further accumulated and cash flow position is improved.

- The persons whose turnover for the year remains below the threshold prescribed for sales tax registration should not suffer any sales tax withholding, which is ultimately refundable to them.
- Companies which are generally tax compliant should be exempted from STWH. This will promote corporatization.

8.5 SALES TAX WITHHOLDING ON ACCRUAL BASIS

Through SRO 485(1) dated June 30, 2015 amendment was made in the Sales Tax Special Procedure (Withholding) Rules, 2007, whereby concept of withholding was revamped. Previously, sales tax was deducted at the time of payment and deposited by 15th of the following month. Now, withholding agents are required to deposit the sales tax withheld on accrual basis i.e. by 15th of the month following the month of purchase irrespective when payment is made.

Recommendation

The Institute is of the view that the laws of withholding sales tax should be on payment basis.

Rationale

Withholding tax provisions are always applicable at the time of “payment” and the amendment made through the above mentioned SRO does not provide any rationale for changing the withholding basis to “accrual”. The recommended changes are in line with the income tax withholding provisions. This will facilitate harmonization and facilitation for a taxpayer.

8.6 REFUND OF WITHHOLDING SALES TAX

There is no provision in the ST Act for refund of sales tax withholding made after lapse of 6 months or more from the date of tax invoice.

Moreover the Sales Tax Special Procedure (Withholding Tax) Rules 2007 do not place any restriction for claiming adjustment of sales tax withheld by buyers of taxable goods, the FBR E-Portal does not allow the taxpayer to claim such adjustment if such adjustment is made after more than 6 months from the date of related invoice.

The above issues unnecessarily lead to filing a refund application for the tax which could not be adjusted by the supplier.

Recommendation

Amendment may be made in Section 2(14) of the ST Act for classification of withheld tax as input tax.

Rationale

To harmonize the ST Act with the Withholding Rules.

8.7 SALES TAX ON COMMERCIAL IMPORTS (SALES TAX SPECIAL PROCEDURE RULES 2007)

At present, minimum value addition tax @ 3% is levied at import stage on all commercial imports.

Recommendation

Higher minimum value addition sales tax [say 5% or 7%] on luxurious items (such as imported cosmetics, biscuits, chocolates, confectionaries, jams, toothpaste, shampoos, juices, drinks, etc.) may be imposed.

Rationale

To support the local industry and saving of precious foreign exchange by discouraging imports of luxury items.

SPECIAL PROCEDURES/S.R.O

9.1 IMPACT ON MANUFACTURING INDUSTRY IN LIGHT OF SRO 895 and of 2013 DATED 4 OCTOBER 2013

Several items have been removed from the Third Schedule vide SRO 895(I)/2013 and these items have now been included in the "Special Procedure for Payment of Extra Sales tax on Specified Goods" vide SRO 896(I)/2013, in lieu of registration by the distributors, however this amendment has increased the cost of doing business for the manufacturers of the item which are being used by them as raw material.

Included therein are items which are consumed by Manufacturing Sector as Raw-Material which are now subject to Extra Tax @ 2% in addition to the standard 17% Sales Tax.

Further, in terms of Section 8(1)(c), the claim of this extra tax of 2% as input tax is not allowed.

Recommendations

Through the ST General Order No. 27 of 2014, a positive step was taken by the FBR whereby exemption from extra tax on auto parts and accessories sold to the manufacturers of automobiles was granted.

The Institute is of the view that similar exemption be extended to all manufacturers and in this respect and recommend that suitable amendments be made in the SRO 896 whereby, the manufacturing sector should either:

i. be excluded from the purview of the SRO 896(1)/2013 and should not be subject to extra tax.

ii. be allowed adjustment for input tax paid by them on goods subject to extra tax and used by them as raw materials/intermediary goods.

Rationale

It puts the Manufacturing sector at a disadvantage as they are not able to adjust the extra 2% paid as input.

9.2 PAYMENT OF SALES TAX BY CHAINS OF WHOLESALE-CUM-RETAIL OUTLETS, ENGAGED IN BULK IMPORT AND SUPPLY OF CONSUMER GOODS

Certain specified goods supplied by the manufacturer's or importers are subject to extra tax of 2%; subsequent supply of such goods is exempt. Accordingly, distributors, wholesalers or retailers of such goods cannot issue any tax invoice to their customers.

Rule 58RA entitles the wholesalers-cum-retailers, operating under Chapter XII of Sales Tax Special Procedure Rules, 2007 to issue sales tax invoice for such goods for the purposes of claiming input tax adjustment by their respective registered customer.

Recommendation

Rule 58T (5) should be amended to exclude Rule 58RA from its application.

Rationale

To bring harmony among Sales Tax Rules 2006.

9.3 EXTRA TAX ON ELECTRIC / GAS BILLS – SRO 509 OF 2013

In term of S.R.O. 509(I)/2013 read with Special Procedures thereof, every electric power and gas distribution company / organization supplying electricity or gas to commercial & industrial consumers is required to charge and collect extra tax @5% having monthly bill exceeding Rs.15,000/- and which have either not provided their sales tax registration number or not appearing in the Active Taxpayers' List maintained by the Federal Board of Revenue.

Recommendation

To make reasonable amendments in SRO 509(I)/2013 considering the practical issues being faced by taxpayers as given below in "rational for change"

Rationale

This SRO has posed the following questions, as a result of which extra tax is unnecessary being passed on by utility companies to its consumers:

a) Majority of electricity connections / accounts are maintained in the name of person who possesses the ownership of commercial / industrial property. Therefore, particulars of the consumers available on sales tax registration certificate / upon FBR portal does not match with the name of the account holder.

b) Banks, Insurance Companies, Telecommunication Companies, Large Multinational and other similar organisations operate through numerous business locations, manufacturing premises, facilitation offices, distribution & warehouses which, in most cases, are not in the name of such organisations. Further, sales tax registration particulars on FBR Portal do not reflect all such business places from which business operations are carried out. If the procedures envisaged in SRO 509 are followed, extra tax would be charged and collected from registered persons in respect of all of their electric connections which are not in the name of such registered persons.

   Furthermore, updation of these particulars (business locations) on FBR database may take considerable time and Banks, Insurance Companies, Telecommunication Companies, Large Multinational which are already registered for sales tax, will have

to bear extra tax of 5% on all such electric & gas connection just because they are not updated in their name over FBR Web Portal.

c) Institutions owned by federal and provincial governments, defence organisation, social sector institution and various other service providers are either not required to obtain sales tax registration number or are registered under Provincial Law. Hence, they neither possess any sales tax registration number nor are required to obtain any registration under the Act. However, most of the aforesaid organisations or institutions are commercial consumers and by virtue of SRO, they are unnecessarily suffering extra tax.

d) Cottage Industry, retailers, hospitals, various agencies, diplomatic missions, privileged person and Organisations have been specifically exempted under the Sixth Schedule to the Act and all of the aforesaid sectors are not required to obtain registration. However, most of the aforesaid organisations or institutions are commercial consumers and by virtue of SRO, they are unnecessarily suffering extra tax.

e) Payment of extra tax on accrual basis (bill basis) by utility companies in the backdrop of low recovery ratio / non-payment of electricity bill by government and private institutions poses a great liquidity threat to utility companies. Hence, it is recommended that extra tax should be recovered on receipt basis as it was never a tool for revenue generation but a penal provision to induce registration drive.

9.4 DRAFT SROs BE ISSUED

As per section 237(3) of the Income Tax Ordinance, 2001, the draft SROs are issued for comments by the stakeholders.

No such provisions are available in any Federal and Provincial Indirect taxes laws, especially Sales Tax Laws and Federal Excise Duty. SROs are uploaded on website and are immediately made applicable from the same day or even some cases yesterday, which is against the quote from the Supreme Court judgement viz. "*I wish that the law making body shall frame the laws after deliberations which is an additional duty cast upon the law making body in terms of the Article 2-A of the Constitution. The same is in accordance with the Injunctions of Islam and Doctrine of Expectation of Consultations*" (Hon'ble Justice Chaudhry Ijaz Ahmed).

Recommendation

It is suggested that provisions about previous publication (draft SROs) be inserted in Indirect Tax laws and Final SRO be applicable from next day of its issuance and be published in the leading newspapers on the issuance day.

Rationale

For transparency, fairness and equality.

FEDERAL EXCISE DUTY 2005

10.1 DUAL TAXATION

FED is leviable on specified goods and services under the Federal Excise Act, 2005. It should be appreciated that the right to tax on services under the Constitution of Pakistan rests with the provinces. In the past, the provinces did not have the means of administration and collection of sales tax on services, consequently, Federal Government had to administer the collection of sales tax on their behalf.

However, the provinces have set-up their own Revenue Board Authority to administer and collect sales –

- Sindh Revenue Board (SRB) through the Sindh Sales Tax on Services Act, 2011 with effect from 01 July 2011.
- Punjab Revenue Authority (PRA) through the Punjab Sales Tax on Services Act, 2012 with effect from 01 July 2012.
- Khyber Pakhtunkhwa Authority (KPKA) through the Khyber Pakhtunkhwa Finance Act, 2013 with effect from 01 July 2013.
- Balochistan Revenue Authority(BRA) through Balochistan Sales Tax on Services Act, 2015 with effect from July 1, 2015

We noted that the FED law, covering service, still remains in force in spite of the fact that the sales tax on services is being taxed separately by the provinces of Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan under their own provincial legislations.

Recommendation

FED should be confined to goods only and all provisions relating to services be eliminated.

Through the Finance Act, 2014, a positive amendment was made and telecommunication services which are taxable under the respective provincial sales tax laws have been excluded from the purview of the FED. Accordingly, it is recommended that FED on all other services which are taxable under the sales tax laws of Sindh, KPK, Punjab and Balochistan be abolished on same lines.

After deleting the taxable services from the FED Act, 2005, a clarification may be issued that there will be no demands created by the FBR on account of sales tax that is payable in the respective provinces and that all existing demands already created stand null and void. This would enable the taxpayers to withdraw the appeals already filed on the matter of dual taxation at various appellate forums.

Rationale

The continued existence of the FED law results in exposure to dual taxation. The FED law covering services should no longer remain in force in the Provinces since the provinces

have their own Revenue Board/Authorities and Provincial legislation to administer and collect sales tax in the respective Provinces.

Moreover, the Federal Board of Revenue through its field offices is attempting to tax the services and banking, insurance, franchise, etc. at the Federal level in spite of the fact that sales tax is being paid at the Provincial level. This results in double taxation and consequently there are numerous appeals pending against the duplicate imposition of sales tax on services.

10.2 ADJUSTMENT OF EXCISE DUTY - SECTION 6 AND RULE 13

FED on purchases is adjustable on payment basis rather than on accrual basis. Moreover, there is also a condition for adjustment that sales proceeds of goods including related FED are received through banking channel.

Recommendation

Adjustment of FED should be allowed on accrual basis i.e. in the month in which purchase is made, in the same manner as it is allowed in the sales tax law. Condition of adjustment after receiving sale proceeds of goods should also be abolished.

Rationale

Condition of claiming FED on payment basis is inconsistent with the requirement of discharging FED liability on sale of goods on accrual basis i.e. in the month of sales/ supply. Moreover, said condition of adjusting FED is also creating cash flow problems for registered persons.

10.3 DEBIT AND CREDIT NOTES - RULE 14 A

Rule 14A allows issuance of debit or credit note for dutiable goods and making corresponding adjustment in return where the amount mentioned in the tax invoice needs to be modified. However, said facility has not been extended to dutiable services.

Recommendation

Necessary amendment may be made in Rule 14A to include reference of services as 0well.

Rationale

Proposed amendment would facilitate the taxpayer for issuance of debit/credit notes relating to FED on services.

10.4 FRANCHISE- SECTION 2, CLAUSE (12A)

Existing definition of the term 'Franchise' is very ambiguous and it is leading to varied interpretation by the tax authorities, which is contrary to the spirit of law and commercial understanding of the said term. Resultantly, a large number of businesses operating as

franchisee in Pakistan are being exposed to unnecessary disputes and litigation on this account.

Recommendation

Definition should be amended to make it align with the commercial meaning of the term 'Franchise' in order to avoid the future disputes on chargeability of FED on franchise in the territories where the FED law is still applicable.

Rationale

Tax authorities are also charging FED on normal technical/business support services which are not obtained from franchiser and which have no nexus with franchise arrangements.

10.5 REVISION OF RETURN - SECTION 4(4)

Approval of Commissioner is required for revision of return by the taxpayer in order to correct the mistakes or wrong declaration in the filed return.

Recommendation

Requirement of obtaining approval of Commissioner should be relaxed in the case of upward revision of return.

Rationale

The upward revision of return resulting in payment of FED liability is also delayed due to cumbersome procedure of obtaining approval from Commissioner.

10.6 DETERMINATION OF VALUE FOR PURPOSES OF DUTY – SECTION 12

Sub-section 4 of Section 12 deals with goods that are chargeable to duty on the basis manufacturer's retail price. It requires that FED should be computed on retail price inclusive of all duties, charges and taxes other than sales tax. Currently, FED on the basis of retail price is chargeable on imported cigarettes, cigars & like products and various types of aerated waters.

Recommendation

FED should be computed on the retail price exclusive of FED so to avoid the complications of imposition of duty on duty.

Rationale

Existing law results in levy of duty on duty i.e. FED on FED.

10.7 APPEALS TO COMMISSIONER - SECTION 33

Commissioner Appeals in hardship case may grant the stay with regard to recovery of demand for a maximum period of 30 days. Said time period is very short since the appeal is not

disposed of by the Commissioner Appeals within such time due to pendency of large number of appeals filed before him. This results in undue hardship to the taxpayer and he needs to approach to the next appellate forum after 30 days for obtaining stay on recovery of demand.

Recommendation

Commissioner Appeals should be empowered to grant stay on recovery of demand for a period of at least 90 days.

Rationale

Objective of proposed amendment is to restrain the tax authorities from collecting the demand in genuine hardship cases till the matter is decided by first appellate authority.

10.8 APPEAL AGAINST ORDERS BY COMMISSIONER – SECTIONS 33 AND 34

Under Section 33, an appeal may be heard by Commissioner Appeals for an order passed by the officer up to the rank of Additional Commissioner. Consequently it follows that if an order is passed by a Commissioner, it can be appealed at the next Appellate forum i.e. the Income Tax Appellate Tribunal under Section 34. However, Section 34 allows appeal against –

- an order passed by the Commissioner Appeals, and
- An order passed by Commissioner under Section 35 (i.e. suo moto examination of proceedings as to the legality or propriety of decision or order passed by a subordinate officer).

Effectively, an order passed by the Commissioner can technically neither be appealed at the Commissioner Appeals level under Section 33 nor at the Appellate Tribunal level under Section 34.

Recommendation

A corrective amendment can be made by removing the mention of the words "under Section 35" from Section 34(1) (b).

Rationale

Corrective amendment to grant a right of appeal before the Income Tax Appellate Tribunal against an order passed by the Commissioner.

10.9 CORRECTIVE AMENDMENT IN SECTION 34A – REFERENCE TO HIGH COURT

Section 34A stipulates that within ninety days of the communication of the order of the Appellate Tribunal under sub-section 2A of Section 34, an aggrieved person or the

Commissioner has a right to file a reference on a question of law with the High Court.

It should be appreciated that sub-section 2A of Section 34 which was originally inserted through Finance (Amendment) Ordinance, 2010 no longer exists in the legislature on account of efflux of time.

Recommendation

A corrective amendment needs to be made by removing the words "sub-section 2A" from Section 34A.

Rationale

Corrective amendment to remove the reference to sub-section 2A, which does not exist in law.

10.10 FED ON FRANCHISE SERVICES - 1ST SCHEDULE

Federal Excise Duty on 'franchise services' is not adjustable against FED or Sales Tax Liability.

Recommendation

Franchise services may be classified as services on which FED is payable in sales tax mode so that same can be claimed as input tax.

Rationale

This way taxpayer, presently absorbing such FED as part of their cost, would be able to reduce their cost.

SINDH SALES TAX ON SERVICES

11.1 REVERSE CHARGE - SECTION 3(2)

Service provided by non-resident service provider is being taxed under reverse charge mechanism i.e. in the hand of service recipient. This provision would tantamount to double taxation, in case where service provider is located in other province of Pakistan.

Recommendation

Reverse charge should be restricted to such cases where service provider is located outside Pakistan.

Rationale

To avoid double taxation

11.2 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS IN SUPPLY CHAIN WHERE TAX UNPAID - SECTION 18

Section 18 of the SST Act provides that where a registered person receiving a taxable service from another registered person is in the knowledge of or has reasonable grounds to suspect that some or all of the tax payable in respect of that taxable service or any previous or subsequent taxable service provided would go unpaid, such person as well as the person providing the taxable service shall be jointly and severally liable for payment of such unpaid amount of tax.

Recommendation

The provision should be deleted.

Rationale

It is against the principle of natural justice that one person is charged for crime of other person.

11.3 DETERMINATION OF INPUT TAX – RULE 22 (1)

As per Rule 22 (1) the Sindh Sales Tax on Services Rules, 2011, adjustment of input tax has to be claimed within four succeeding tax periods. The Institute is of the view that time limitation imposed by the law is short.

Recommendations

The time period for claiming input tax on purchases should be increased to one year from the present four months.

Rationale

Increase in time period for claiming input tax will facilitate registered persons.

11.4 INPUT TAX NOT ALLOWED – RULE 22A (v)

A registered person is restricted to claim or deduct input tax paid on the goods or services in respect of which sales tax has not been deposited in the Government treasury by the respective suppliers.

Recommendation

Rule 22A(v) should be deleted.

Rationale

The Honorable Lahore High Court (LHC), in a petition on W.P. No. 3515/2012 has ruled the provision as unconstitutional while deciding the Federal ST appeals of similar provision contented in the Federal ST Act.

11.5 REFUND - RULE 23A

Refund is only allowed to registered persons in following cases:-

(a) the amount of sales tax is erroneously or inadvertently deposited in excess of the amount due; and

(b) the amount deposited by or recovered from the registered person is held not payable under the Act, as result of an order of a court or an appellate forum.

Recommendation

The existing law does not cater for refund arising as a result of the following situations which may be added:

(a) excess input tax not adjusted against tax liabilities of consecutive twelve months; and

(b) tax withheld in excess of net tax liability for the relevant tax period and remained unadjusted against tax liabilities of consecutive twelve months.

Rationale

To facilitate the taxpayer, especially the new taxpayer.

11.6 SALES TAX WITHHOLDING FROM REGISTERED COMPANIES

At present all taxpayers are subject to withholding tax which results in unwarranted administrative and operational issues. Besides, in case of registered / compliant taxpayer,

withholding tax deduction and subsequent deposit in the exchequer does not yield in any incremental revenue for the Government.

Recommendation

Service providers being companies which are not on SRB's suspension list should be exempted from withholding rules, like Punjab Sales Tax.

Rationale

To facilitate taxpayer and expand the tax base.

11.7 EXEMPTION TO HOSPITALS AND INDUSTRIAL KITCHENS

The Federal Government has provided exemption in Sixth Schedule to the Federal ST Act on goods supplied to hospitals run by the Federal or Provincial Governments; or charitable operating hospitals of fifty beds or more; or the teaching hospitals of statutory universities of two hundred or more beds; and foodstuff cooked or prepared in-house and served in messes run on the basis of mutuality; and industrial canteens for workers. In addition to above, pharmaceutical products i.e. drugs are also exempted from federal sales tax however exemption is not available under the SST Act or in other provincial laws on the toll manufacturing charges paid for manufacture of drugs.

Recommendation

The SRB should allow exemption on services provided to hospitals and on services of toll manufacturing of drugs. Further, foodstuff cooked or prepared in-house by the employer and served to its employees or services in messes run on the basis of mutuality and industrial canteens for workers should be exempted from sales tax because such activity is not being done for economic purpose.

Rationale

To remove inequality in the law.

11.8 EXPORT OF SERVICES

The Federal Government currently allows zero rating on goods exported to promote exports of the country and to provide a level playing field to exporters in the international market who earn foreign exchange. SRB provides exemption to Accountants & Auditors and Software Consultants only.

Recommendation

Zero rating on export of all the services should be allowed.

Rationale

To promote export of services in the international market.

11.9 INPUT TAX ON SERVICE WHERE THE PERSON IS RECEIVING THE SUPPLY FROM ABROAD

A person receiving taxable service from abroad has to pay sales tax on reverse charge mechanism under Section 3(2) read with Section 9(2) of SST Act which is in substance an input tax in the hands of the service recipient.

Recommendation

SRB should clearly allow the SRB registered services recipient to claim sales tax paid on reverse charge as input tax against its own name in Annexure-A.

Rationale

To bring harmony with the provisions of import of goods existing in the Federal ST Act.

11.10 DEFINITION OF 'FRANCHISE SERVICES'

The definition of 'Franchise Services' is very broad and generic which covers technology transfers being made through use of technical information for manufacturing in Pakistan.

Recommendation

Use of product knowledge, technical know-how/ information for manufacturing should not be included in the definition of 'Franchise Services'.

Rationale

Technology transfers being made through use of technical knowhow/ information for manufacturing in Pakistan generates employment, saves foreign cash outflows for imports and contributes to society.

11.11 WITHHOLDING SALES TAX FROM PAYMENTS TO UNREGISTERED PERSONS

At present, under the SST (Withholding) Rules, where a service is provided by an unregistered person, the liability to pay the tax shall be on the person receiving the service and the whole amount of sales tax is required to be withheld from payment to unregistered person.

Recommendation

Withholding agents should be exempted from deducting sales tax from payments to unregistered persons or sales tax @1% may be deducted from payments to unregistered persons.

Rationale

The withholding agents are unnecessarily burdened with deduction of sales tax which is not

claimable as input tax and is thus resulting in increasing their cost of doing business. Under the Federal ST Act 1% withholding is required from payment to un-registered persons.

11.12 CERTIFICATE BY THE AUDITORS

The registered persons, whose accounts are subject to audit under the Companies Ordinance, 1984, are required to submit a copy of the annual audited accounts, along with a certificate by the auditors certifying the payment of the tax due and any deficiency in the tax paid by the registered person.

Recommendation

Sub-section 5 of Section 31 should be amended to exclude the condition of provision of certificate by the auditors.

Rationale

With the present scope of statutory audit, the auditor cannot certify the payment of the sales tax due and any deficiency in the tax paid by the registered person.

11.13 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES & CONSTRUCTION SERVICES

In pursuant to the Notification No.SRB-3-4/7/2013 dated June 18, 2013, services provided or rendered by persons engaged in contractual execution of work or furnishing supplies are taxable under the tariff heading 9809.0000. However, under the captioned notification, the contractual execution of work or furnishing supplies will be exempt from sales tax where the total value such contract does not exceed Rs.50 million in a financial year subject to the condition that the value component of service in such contract also does not exceed 10 million rupees.

Similarly, construction services are taxable under the tariff heading 9824.000. However, under the captioned notification, construction services will be exempt from sales tax in case of services related to projects of commercial and industrial nature, where the value of construction does not exceed 50 million rupees subject to the condition that the value component of service in such a project also does not exceed Rs.10 million.
The following practical scenarios may be developed to identify the practical difficulties:

a) whether the threshold of Rs.50 million will be determined on the basis of aggregate value of total contracts entered by contractor during the year or on the basis of value of individual contract.

b) whether exemption threshold is to be tested with respect to a financial year (FY). For instance, the total value of a contract is Rs.90 million (having service component of Rs.18 million). In FY 1, value of work completed is Rs.45 million (including service component of Rs.9 million). The question arises whether the sales tax would be applicable on the value of contract completed in FY 1 or on the total value of the contract.

c) whether the above tariff headings apply only to composite contracts i.e. contracts which

includes both supply of goods and rendering of services simultaneously under a single contract and do not apply to:

i) contract for supply of goods only
ii) contract for rendering of services (no supply component)

d) whether sales tax should be charged only on the service component of a composite contract and such service should also be taxable under the Second Schedule to the Sindh Sales Tax on Services Act, 2011.

Recommendation

The Sindh Revenue Board (SRB) should issue clarifications in respect of the practical issues identified above.

Rationale

To avoid practical difficulties being faced by the service providers registered with the SRB who are engaged in providing services under composite contracts. This will avoid litigations.

PUNJAB SALES TAX ON SERVICE

12.1 REVERSE CHARGE - SECTION 4

Sales Tax on services in Punjab is based on the consumption as well as origin principle. This provision would tantamount to double taxation in case where services provider is located in other provinces of Pakistan, where sales tax on services levied on the basis of origin and inter provincial transactions are not zero rated or exempt in the jurisdiction of origin.

Recommendation

Section 4 should be amended as reverse charge should be restricted to such cases where services provider is located outside Pakistan.

Rationale

To avoid double taxation

12.2 DETERMINATION OF INPUT TAX – RULE 4

As per Rule 4 of the PST Services Rules, 2012, adjustment of input tax has to be claimed within four succeeding tax periods. The Institute is of the view that time limitation imposed by the law is short.

Recommendation

The time period for claiming input tax on purchases should be increased to one year from the present four months.

Rationale

Increase in time period for claiming input tax will facilitate registered persons.

12.3 SALES TAX ON MANPOWER RECRUITMENT AGENTS INCLUDING LABOUR AND MANPOWER SUPPLIES

Punjab Sales Tax (PST) is applicable on gross value of receipt by manpower recruitment agents including salary and allowances of the labour and manpower supplied by such person.

Recommendation

Amendment should be made to exclude salary and allowances of the labour and manpower from the value of service rendered by such person, where reimbursement is made on actual basis.

Rationale

To tax only services amount instead of gross receipts including reimbursement and to bring in conformity with the rules prescribed by SRB on the same issue.

12.4 ADMISSIBILITY OF INPUT SALES TAX

As per Clause (iv) of Rule 4 of the Punjab Sales Tax on Services (Adjustment of Tax) Rules, 2012, a registered person is restricted to claim or deduct input tax paid on the goods or services in respect of which sales tax has not been deposited in the government treasury by the respective suppliers.

Recommendation

The provision should be deleted.

Rationale

The Honorable Lahore High Court (LHC) has ruled the provision as unconstitutional while deciding the ST appeals of same provision contended in Federal ST Act.

12.5 DEFINITION OF 'FRANCHISE SERVICES'

The definition of 'Franchise Services' is very broad and generic which covers technology transfers being made through use of technical information for manufacturing in Pakistan.

Recommendation

Use of product knowledge, technical know-how/ information for manufacturing should not be included in the definition of "Franchise Services".

Rationale

Technology transfers being made through use of technical knowhow/ information for manufacturing in Pakistan generates employment, saves foreign cash outflows for imports and contributes to society.

12.5 EXEMPTION TO HOSPITALS AND INDUSTRIAL KITCHENS

The Federal Government provides exemption in Sixth Schedule to the ST Act on goods supplied to hospitals run by the Federal or Provincial Governments; or charitable operating hospitals of fifty beds or more; or the teaching hospitals of statutory universities of two hundred or more beds; and foodstuff cooked or prepared in-house and served in messes run on the basis of mutuality; and industrial canteens for workers. In addition to above, pharmaceutical products i.e. drugs are also exempted from sales tax. The similar exemption is not provided in the Punjab ST Act.

Recommendations

The PRA should allow exemption on services provided to hospitals or on services of toll manufacturing of drugs. Further, foodstuff cooked or prepared in-house by the employer and served to its employees or services in messes run on the basis of mutuality and industrial canteens for workers should be exempted from sales tax because such activity is not being done for economic purpose.

Rationale

To provide identical exemption as provided under the ST Act.

12.7 DISALLOWANCE OF INPUT TAX ADJUSTMENT

Rule 6 of the PST (Adjustment of Tax) Rules 2012 disallows input tax adjustment in respect of tax paid on the basis of the principles of origin and reverse charge under Section 4 of the PST Act.

Recommendation

Rule 6 should be deleted.

Rationale

In order to harmonize with the principle of VAT.

12.8 SALES TAX ON SERVICES MADE TO HOSPITALS/CHARTTABLE TRUSTS

No exemption from Punjab sales tax is available on services provided to Hospitals/ Charitable Trust.

Recommendation

Exemption should be allowed on services provided to hospitals/charitable trusts.

Rationale

Such activity is not being done for economic purpose. The exemption should be in line with the ST Act.

12.9 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS IN SUPPLY CHAIN WHERE TAX UNPAID - SECTION 19

Section 19 of the PST Act provides that where a registered person receiving a taxable service from another registered person is in the knowledge of; or has reasonable grounds to suspect that some or all of the tax payable in respect of that taxable service or any

previous or subsequent taxable service provided would go unpaid, such person as well as the person providing the taxable service shall be jointly and severally liable for payment of such unpaid amount of tax.

Recommendation

The above provision should be deleted.

Rationale

It is against the principle of natural justice that a person could be charged for crime of other person specifically in this case where the person providing the service is already registered with PRA and collecting sales tax as an agent of PRA. No rationale for service recipient to suspect that sales tax on services would go unpaid.

12.10 WITHHOLDING SALES TAX FROM PAYMENTS TO UNREGISTERED PERSONS

At present, under the Punjab Sales Tax on Services (Withholding) Rules 2015, where a service is provided by an unregistered person, the liability to pay the tax shall be on the person receiving the service and the whole amount of sales tax is required to be withheld from payment to unregistered person.

Recommendation

Withholding agents should be exempted from deducting sales tax from payments to unregistered persons or sales tax @1% may be deducted from payments to unregistered persons.

Rationale

The withholding agents are unnecessarily burdened with deduction of sales tax which is not claimable as input tax and is thus resulting in increasing their cost of doing business. Under the Federal ST Act 1% withholding is required from payment to un-registered persons.

12.11 REFUND OF EXCESS INPUT TAX

Excess input tax paid is refundable only in the case of export of services outside Pakistan which are not liable to Punjab sales tax, subject to following conditions:

- service is delivered and used outside Pakistan
- payment is received in convertible foreign exchange through banking channels
- usage, supply or consumption of any goods taxable under the ST Act in rendering of such services is treated as zero rated supply and entitled to tax refund.

Excess input tax arising for any other reason is not refundable.

Recommendation

Refund on account of excess input tax should be allowed to all taxpayers providing taxable services at the standard rate.

Rationale

Refund of excess input tax should be allowed to all taxpayers to conform to the principles of VAT.

12.12 CERTIFICATE BY THE AUDITORS

The registered persons, whose accounts are subject to audit under the Companies Ordinance, 1984, are required to submit a copy of the annual audited accounts, along with a certificate by the auditors certifying the payment of the tax due and any deficiency in the tax paid by the registered person.

Recommendation

Sub-section 5 of Section 31 should be amended to exclude the condition of provision of certificate by the auditors.

Rationale

With the present scope of statutory audit, the auditor cannot certify the payment of the sales tax due and any deficiency in the tax paid by the registered person.

12.13 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES

Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies are taxable under the tariff heading 9809.0000 excluding the contract where annual value of the contract does not exceed Rs.50 million.

The following practical scenarios may be developed to identify the practical difficulties:

- Whether the threshold of Rs.50 million will be determined on the basis of aggregate value of total contracts entered by contractor during the year or on the basis of value of individual contract.

- Whether exemption threshold is to be tested with respect to a financial year (FY). For instance, the total value of a contract is Rs.90 million. In FY 1, value of work completed is Rs.45 million. The question arises whether the sales tax would be applicable on the value of contract completed in FY 1 or on the total value of the contract.

- Whether the above tariff headings apply only to composite contracts i.e. contracts which include both supply of goods and rendering of services simultaneously under a single contract and do not apply to:

i) contract for supply of goods only
ii) contract for rendering of services (no supply component)

Recommendation

The PRA should issue clarifications/guidelines in respect of the practical issues identified above. It should also be clarified that sales tax should be charged only on the service component of a composite contract and such service should also be taxable under the Second Schedule to the Punjab Sales Tax on Services Act, 2012.

Rationale

To avoid practical difficulties being faced by the service providers registered with the PRA who are engaged in providing services under composite contracts.

KHYBER PUKHTUNKHWA SALES TAX ON SERVICES

13.1 INPUT TAX ADJUSTMENT - SECTION 7

Input tax adjustment of sales tax paid on services under KPRA Finance Act, 2013 is not admissible against Federal output tax under the S.R.O. 212 dated March 26, 2014

Recommendation

KPRA should execute an MOU with the Ministry of Finance on the same pattern as identical MOUs were signed by other provincial sales tax authorities.

Rationale

This will remove distortion.

13.2 REVERSE CHARGE - SECTION 20

Sales Tax on services in Khyber Pakhtunkhwa is based on the consumption as well as origin principle. This provision would tantamount to double taxation in case where services provider is located in other provinces of Pakistan, where sales tax on services levied on the basis of origin and inter provincial transactions are not zero rated or exempt in the jurisdiction of origin.

Recommendation

Section 20 should be amended as reverse charge should be restricted to such cases where services provider is located outside Pakistan.

Rationale

To avoid double taxation.

13.3 REIMBURSEMENT OF SERVICE COST

In certain cases, service providers pay sales tax on behalf of its customers such as government dues, legal fees, court fees etc. At the same time, taxpayers arrange services on behalf of its customers and recover the same as reimbursement of expenses. By fiction of law, it is being treated as taxable.

Recommendation

A specific clause should be inserted in values of supply / services to exclude reimbursable expenses incurred on behalf of customers.

Rationale

Expenses incurred on behalf of customers involve certain services which are already taxed.

Therefore, charging sales tax on such services would tantamount to double taxation.

13.4 REFUND

Refund is allowed to registered person but no procedures have been prescribed.

Recommendation

KPRA should prescribe rules for sanctioning of refunds and allied matters.

Rationale

To facilitate registered persons.

13.5 EXPORT OF SERVICES

The Federal Government allows zero rating of goods exported to enhance level playing field in international market and to incentivize the person earning foreign exchange for the Government.

Recommendation

KPRA should also zero rate export of all services.

Rationale

To enhance export of services.

13.6 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS IN SUPPLY CHAIN WHERE TAX UNPAID - SECTION 35

Section 35 of the KPK Act provides that where a registered person receiving a taxable service from another registered person is in his knowledge; or he has reasonable grounds to suspect that some or all of the tax payable in respect of that taxable service or any previous or subsequent taxable service provided would go unpaid, such person as well as the person providing the taxable service shall be jointly and severally liable for payment of such unpaid amount of tax.

Recommendation

The provision should be deleted.

Rationale

It is against the principle of natural justice that one person is charged for crime of other person.

13.7 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES

Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies are taxable under the tariff heading 9809.0000. It is however, yet to be clarified by KPK authority that the above tariff headings apply only to service component of composite contracts i.e. contracts which includes both supply of goods and rendering of services simultaneously under a single contract and do not apply to:

i) contract for supply of goods only

ii) contract for rendering of services (no supply component)

Moreover, no exemption threshold is provided in the KPK Act like in Sindh and Punjab.

Recommendation

Minimum threshold for charging of sales tax should be prescribed in the law in lines with Sindh and Punjab. It should also be clarified that sales tax should be charged only on the service component of a composite contract and such service should also be taxable under the Schedule II to the KPK Finance Act, 2013.

Rationale

To avoid practical difficulties being faced by the service providers registered with the KPK Authority who are engaged in providing services under composite contracts.

BALOCHISTAN SALES TAX ON SERVICES

14.1 REVERSE CHARGE - SECTION 4

Sales Tax on services in Balochistan is based on the consumption as well as origin principle. This provision would tantamount to double taxation in case where services provider is located in other provinces of Pakistan, where sales tax on services levied on the basis of origin and inter provincial transactions are not zero rated or exempt in the jurisdiction of origin.

Recommendation

Section 4 should be amended as reverse charge should be restricted to such cases where services provider is located outside Pakistan.

Rationale

To avoid double taxation.

14.2 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS - SECTION 19

Section 19 of the Balochistan Sales Tax on Services Act 2015 provides that where a registered person receiving a taxable service from another registered person is in his knowledge; or he has reasonable grounds to suspect that some or all of the tax payable in respect of that taxable service or any previous or subsequent taxable service provided would go unpaid, such person as well as the person providing the taxable service shall be jointly and severally liable for payment of such unpaid amount of tax.

Recommendation

The provision should be deleted.

Rationale

It is against the principle of natural justice that one person is charged for crime of other person.

REFERENCE INDEX

DIRECT TAXES

POLICY ISSUES

2.1	RATE OF CORPORATE TAX
2.2	INCENTIVE FOR NON-FILERS TO BECOME FILERS
2.3	TAXATION OF AOP'S OF PROFESSIONALS
2.4	INTER CORPORATE DIVIDEND INCOME
2.5	TAX ON UNDISTRIBUTED RESERVES - SECTIONS 5A AND 8
2.6	PERSONAL TAX CREDIT - SECTION 21(1)
2.7	THRESHOLD FOR CASH PAYMENTS - SECTION 21(L)
2.8	THRESHOLD FOR SALARY PAID IN CASH - SECTION 21(M)
2.9	DEDUCTIBLE ALLOWANCE FOR PROFIT ON DEBT - SECTION 64A
2.10	SET OFF OF LOSSES - SECTION 56
2.11	SMALL COMPANY - WITHHOLDING AGENT
2.12	FINAL TAXATION
2.13	TAX ON CAPITAL GAINS (SECURITIES) OF NON-RESIDENT
2.14	APPELLATE FORUMS
2.15	APPOINTMENT OF THE APPELLATE TRIBUNAL - SECTION 130 (4)
2.16	INCENTIVES TO EVADE TAXES - SECTION 111 (4)(A)
2.17	AMNESTY SCHEMES
2.18	EXPORT OF SERVICES
2.19	CALCULATION OF DEPLETION ALLOWANCE – FIFTH SCHEDULE
2.20	EXEMPTION OF INCOME RECEIVED FROM ANNUITY
2.21	CONDONING OF TIME LIMIT BY THE BOARD - SECTION 214A
2.22	CERTIFICATE OF EXEMPTION - SECTION 148(7)
2.23	TIMING OF BUDGET

2.24	COMPENSATION AGAINST TAX DEMAND PAYMENTS - SECTION 137(2)
2.25	WITHHOLDING TAX EXEMPTIONS FOR NON-PROFIT ORGANIZATIONS
2.26	REVIVAL OF ALTERNATIVE DISPUTE RESOLUTION COMMITTEE
2.27	PAYMENTS FOR GOODS, SERVICES AND CONTRACTS (ADVANCE TAX DEDUCTION) - SECTION 153(3)
2.28	EXPORTS (ADVANCE TAX DEDUCTION) SECTION 154(5)
2.29	IMPACT OF TAX CREDITS ON EXPORTERS - SECTIONS 65B, 65D AND 65E
2.30	TIME OF DEDUCTION OF TAX - SECTION 158
2.31	TIME PERIOD - SECTION 65B, 65D AND 65E
2.32	TAX CREDIT - SECTION 65E
2.33	ADJUSTMENT OF BROUGHT FORWARD LOSSES CONSEQUENT TO AMALGAMATION
2.34	WORKERS' WELFARE FUND (WWF)
2.35	DEDUCTIBLE ALLOWANCE FOR WWF - SECTION 60A
2.36	NON-RECOGNITION RULES - SECTION 79
2.37	ISLAMIC MODES OF FINANCING - RULE (3) OF 7TH SCHEDULE
2.38	ADVANCE TAX REGIME FOR BANKS - RULE 5 (1A) OF 7TH SCHEDULE & SECTION 147(6)
2.39	INCREMENT IN ALLOWANCE FOR BAD DEBTS - RULE 1(C) OF 7TH SCHEDULE
2.40	EXEMPTION OF MINIMUM TAX AS MENTIONED IN CLAUSE 11 A (XVI) OF PART IV OF 2ND SCHEDULE - SECTION 113
2.41	RATE OF CORPORATE TAX FOR BANKS – FIRST SCHEDULE
2.42	FOREIGN TAX CREDIT - SECTION 103(7)
2.43	DIRECTOR GENERAL INTELLIGENCE & INVESTIGATION - SECTIONS 208 & 230, SRO 115(I)/2015
2.44	DEPRECIABLE COST - SECTION 22(13)(A)

DOCUMENTATION, RESOURCE MOBILIZATION AND BROADENING OF TAX BASE

3.1 AVAILABILITY OF INFORMATION ON WEB PORTAL

3.2 CAPITAL GAIN TAX – SECTION 37A (5)

3.3 WITHHOLDING TAX ON INDUSTRIAL AND COMMERCIAL CONSUMERS

3.4 GRANT OF STAY BY COMMISSIONER (APPEALS) - SECTION 128(1A)

3.5 POWER TO SET ASIDE - SECTION 129

3.6 RATE OF TAX ON SERVICES & CONTRACTUAL SERVICES - SECTION 153

REMOVAL OF HARDSHIPS

4.1 ALTERNATIVE CORPORATE TAX (ACT) - SECTION 113C

4.2 PERQUISITES - SECTION 13(7) AND EXEMPTION OF PERQUISITES - CLAUSE (53A) OF PART I OF SECOND SCHEDULE

4.3 LIMIT OF EMPLOYER'S CONTRIBUTION TO PROVIDENT FUND- CLAUSE (3) PART I OF 6TH SCHEDULE

4.4 DEPRECIATION ON ASSETS UNDER THE MUSHARAKA ARRANGEMENT – SECTION. 22

4.5 GROUP TAXATION - SECTION 59AA

4.6 GROUP RELIEF SECTION - 59B

4.7 TAX CREDIT FOR INVESTMENT - SECTION 65B

4.8 PRINCIPLE OF TAXATION OF - AOP SECTION 92

4.9 TIMINGS FOR FILING OF RETURN OF INCOME - SECTION 114

4.10 TIME LIMIT FOR FURNISHING RETURN OF INCOME UPON NOTICE FROM THE COMMISSIONER – SECTION 114 (4)

4.11 REVISION BY CHIEF COMMISSIONER IN AUDIT SELECTION – SECTION 122B

4.12 COLLECTION OF TAX IN THE CASE OF PRIVATE COMPANIES AND AOP'S - SECTION 139

4.13 ADVANCE TAX PAID BY THE TAXPAYER - SECTION 147(4A)

4.14 PAYMENTS TO NON-RESIDENTS – SECTION 152

4.15	EXECUTION OF CONTRACT - SECTION 153(1)(C)
4.16	WITHHOLDING TAX ON PAYMENTS FOR GOODS AND SERVICES - SECTION 153
4.17	PRESCRIBED WITHHOLDING AGENTS – SECTION 153(9)
4.18	TIME LIMIT FOR ORDER AND APPEAL THEREOF – SECTION 153(4)
4.19	PERSONS REGISTERED UNDER THE SALES TAX ACT
4.20	MONITORING OF WITHHOLDING TAX - SECTION 161
4.21	COMPENSATION TO WITHHOLDING AGENTS - SECTION 153
4.22	ADDITIONAL PAYMENT FOR DELAYED REFUNDS - SECTION 170(4)
4.23	OFFENCES AND PENALTIES– SECTION 182
4.24	ADVANCE TAX ON PRIVATE MOTOR VEHICLES - SECTION 231B
4.25	DOMESTIC AIR TICKET – SECTION 236B
4.26	WITHHOLDING TAX ON PROMOTIONAL MATERIAL - SECTION 156
4.27	DEPOSIT OF WITHHOLDING TAX
4.28	ADVANCE TAX – SECTION 147
4.29	CHARGES AGAINST BAD & DOUBTFUL DEBTS
4.30	GROUP RELIEF - SEVENTH SCHEDULE
4.31	INSURANCE COMPANIES
4.32	TAX ON ELEMENT OF INCOME OF MUTUAL FUNDS
4.33	BONUS SHARES ISSUED BY COMPANIES - SECTIONS 236M & 236N
4.34	WITHHOLDING AGENTS - SECTION 164
4.35	TERM ‘ANY BUSINESS CONNECTION’ - SECTION 101(3) (D)
4.36	WITHHOLDING TAX ON TERMINATION OF EMPLOYMENT
4.37	TRANSFER PRICING
4.38	IMMUNITY FROM SELECTION FOR AUDIT - SECTION 214D(4) & (5)
4.39	STRENGTHENING OF AUDIT
4.40	CASH WITHDRAWAL FROM A BANK (DEDUCTION OF TAX) - SECTION 231A

4.41 APPLICATION FOR ONLINE EXEMPTION CERTIFICATE

4.42 ISSUES BEING FACED WHILE E-FILING INCOME TAX WITHHOLDING STATEMENTS

4.43 ACCESS TO CUSTOMER INFORMATION - SECTION 165 & 165A

4.44 AUTOMATIC STAY - SECTION 137

4.45 RECOVERY NOTICES TO BANKS - SECTION 140

4.46 TERM 'TECHNOLOGY' - SECTION 2(23)

TECHNICAL AND EDITORIAL

5.1 EXEMPTION FROM SPECIFIC PROVISIONS CLAUSE (46) PART IV OF 2ND SCHEDULE

5.2 EXEMPTION FROM COLLECTION AND DEDUCTION OF TAX AT SOURCE

5.3 TAX ON SHIPPING BUSINESS OF A RESIDENT PERSON SECTION 7A CLAUSE (21) OF PART II OF 2ND SCHEDULE

5.4 TAX ON PROFIT ON DEBT - SECTIONS 7B AND 151

5.5 REPATRIATION OF AFTER TAX PROFITS BY BRANCH OFFICES OF PAKISTANI COMPANIES LOCATED IN AZAD JAMMU & KASHMIR

5.6 MINIMUM TAX CARRY FORWARD AND ADJUSTMENT - SECTION 113

5.7 WITHDRAWAL OF BALANCE UNDER PENSION FUND - SECTION 156B

5.8 CERTIFICATE OF COLLECTION OR DEDUCTION OF TAX AT SOURCE–SEC. 164

5.9 PROSECUTION FOR NON-COMPLIANCE WITH STATUTORY OBLIGATIONS - SECTION 191

5.10 DEFAULT SURCHARGE- SECTION 205(1B)

5.11 ELECTRICITY CONSUMPTION (COLLECTION OF TAX AT SOURCE) - SECTION 235(4)

5.12 EXEMPTION OF INCOME OF WPPF - CLAUSE (66) OF PART - I OF SECOND SCHEDULE

5.13 REDUNDANT CLAUSES (56B), (56C), (56D), (56E), (56F) AND (56G)

5.14 WORKERS WELFARE FUND ORDINANCE, 1971

INDIRECT TAXES

POLICY ISSUES

6.1	HARMONIZATION OF FEDERAL AND PROVINCIAL INDIRECT TAXES
6.2	HIGH RATE OF TAX
6.3	PRESUMPTIVE / VALUE ADDITION / FIXED TAX SCHEMES
6.4	INCENTIVE FOR GENERAL PUBLIC AND REGISTERED PERSONS
6.5	DUAL TAXATION
6.6	UNDER INVOICING
6.7	REFUND AND ELECTRINIC INVOICES
6.8	E-INVOICING
6.9	APPEAL EFFECTS
6.10	REGISTRATION UNDER SALES TAX
6.11	REVIVAL OF SETTLEMENT COMMISSION
6.12	TAXPAYERS AND PARLIAMENTARIANS' DIRECTORIES

SALES TAX ACT, 1990

7.1	TIME OF SUPPLY - SECTION 2(44)
7.2	SALES TAX ON ADVANCES - SECTION 2(44)
7.3	FURTHER TAX BE PART OF OUTPUT TAX – SECTION 3(1A) READ WITH SECTION 7
7.4	FURTHER TAX - PERSONS NOT LIABLE TO BE REGISTERED
7.5	TIME PERIOD FOR CLAIMING INPUT TAX/REFUNDS - SECTION 7(1) AND SECTION 66
7.6	TAX CREDIT NOT ALLOWED - SECTION 8 (1) (a)
7.7	TAX CREDIT NOT ALLOWED - SECTION 8 (1) (ca)
7.8	INPUT TAX CREDIT ON BUILDING MATERIALS – SECTION 8 (1) (H)
7.9	INPUT TAX CREDIT ON PROVINCIAL SERVICES – SECTION 8 (1) (J)

7.10 ADJUSTABLE INPUT TAX - SECTION 8B

7.11 DEBIT & CREDIT NOTES IN CASE OF BAD DEBTS - SECTION 9

7.12 SHOW CAUSE NOTICES - SECTION 11

7.13 DISCHARGE OF LIABILITY AT SUBSEQUENT STAGE – SECTION 11

7.14 DE-REGISTRATION, BLACKLISTING AND SUSPENSION OF REGISTRATION - SECTION 21 (2)

7.15 TAX CREDIT NOT ALLOWED SECTION 21 (3)

7.16 MULTIPLE AUDITS – SECTION 25 & 38

7.17 POWER TO ARREST - SECTION 37A

7.18 LIABILITY FOR PAYMENT OF TAX - SECTION 58

7.19 INADMISSIBLE INPUT TAX - SECTION 73

7.20 CONDONATION OF TIME LIMIT - SECTION 74

7.21 CONDONATION FOR COMPLIANCE - SECTION 74

7.22 SALES TAX AT THE RETAIL PRICE - THIRD SCHEDULE

7.23 EXEMPTION TO CHARITABLE INSTITUTES - SIXTH SCHEDULE

7.24 MURABAHA TRANSACTIONS

7.25 SALES TAX ON TOLL MANUFACTURING CHARGES BY FEDERAL AND PROVINCIAL GOVERNMENTS

7.26 E-FILING OF SALES TAX RETURN

SALES TAX RULES, 2006

8.1 INVENTORY RECORD FOR GOODS DESTROYED - RULE 23

8.2 UNADJUSTED INPUT TAX- RULE 36

8.3 INITIATION OF RECOVERY ACTION - RULE 71

8.4 SALES TAX WITHHOLDING RULES, 2007

8.5 SALES TAX WITHHOLDING ON ACCRUAL BASIS

8.6 REFUND OF WITHHOLDING SALES TAX

8.7 SALES TAX ON COMMERCIAL IMPORTS (SALES TAX SPECIAL PROCEDURE RULES 2007)

SPECIAL PROCEDURES/S.R.O

9.1	IMPACT ON MANUFACTURING INDUSTRY - SRO 895/2013 & SRO 896/2013
9.2	PAYMENT OF SALES TAX BY CHAINS OF WHOLESALE-CUM-RETAIL OUTLETS, ENGAGED IN BULK IMPORT AND SUPPLY OF CONSUMER GOODS
9.3	EXTRA TAX ON ELECTRIC / GAS BILLS – SRO 509 OF 2013
9.4	DRAFT SROs BE ISSUED

FEDERAL EXCISE DUTY 2005

10.1	DUAL TAXATION
10.2	ADJUSTMENT OF EXCISE DUTY - SECTION 6 AND RULE 13
10.3	DEBIT AND CREDIT NOTES - RULE 14 Avv
10.4	FRANCHISE - SECTION 2, CLAUSE (12A)
10.5	REVISION OF RETURN - SECTION 4 (4)
10.6	DETERMINATION OF VALUE FOR PURPOSES OF DUTY - SECTION 12
10.7	APPEALS TO COMMISSIONER - SECTION 33
10.8	APPEAL AGAINST ORDERS BY COMMISSIONER - SECTIONS 33 AND 34
10.9	CORRECTIVE AMENDMENT IN SECTION 34A – REFERENCE TO HIGH COURT
10.10	FED ON FRANCHISE SERVICES - 1ST SCHEDULE

SINDH SALES TAX ON SERVICES

11.1	REVERSE CHARGE – SECTION 3 (2)
11.2	JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS – SECTION 18
11.3	DETERMINATION OF INPUT TAX – RULE 22 (1)
11.4	INPUT TAX NOT ALLOWED – RULE 22A (v)
11.5	REFUND – RULE 23 A
11.6	SALES TAX WITHHOLDING FROM REGISTERED COMPANIES
11.7	EXEMPTION TO HOSPITALS AND INDUSTRIAL KITCHENS

11.8 EXPORT OF SERVICES

11.9 INPUT TAX ON SERVICE WHERE THE PERSON RECEIVING THE SUPPLY FROM ABROAD

11.10 DEFINITION OF 'FRANCHISE SERVICES'

11.11 WITHHOLDING SALES TAX FROM PAYMENTS TO UNREGISTERED PERSONS

11.12 CERTIFICATE BY THE AUDITORS

11.13 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES & CONSTRUCTION SERVICES

PUNJAB SALES TAX ON SERVICES

12.1 REVERSE CHARGE - SECTION 4

12.2 DETERMINATION OF INPUT TAX – RULE 4

12.3 SALES TAX ON MANPOWER RECRUITMENT AGENTS INCLUDING LABOUR AND MANPOWER SUPPLIES

12.4 ADMISSIBILITY OF INPUT SALES TAX

12.5 DEFINITION OF 'FRANCHISE SERVICES'

12.6 EXEMPTION TO HOSPITALS AND INDUSTRIAL KITCHENS

12.7 DISALLOWANCE OF INPUT TAX ADJUSTMENT

12.8 SALES TAX ON SERVICES MADE TO HOSPITALS/CHARITABLE TRUSTS

12.9 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS – SECTION 19

12.10 WITHHOLDING SALES TAX FROM PAYMENTS TO UNREGISTERED PERSONS

12.11 REFUND OF EXCESS INPUT TAX

12.12 CERTIFICATE BY THE AUDITORS

12.13 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES

KHYBER PAKHTUNKHWA SALES TAX ON SERVICES

13.1 INPUT TAX ADJUSTMENT - SECTION 7

13.2 REVERSE CHARGE - SECTION 20

13.3 REIMBURSEMENT OF SERVICE COST

13.4 REFUND

13.5 EXPORT OF SERVICES

13.6 JOINT AND SEVERAL LIABILITY OF REGISTERED – SECTION 35

13.7 CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES

BALOCHISTAN SALES TAX ON SERVICES

14.1 REVERSE CHARGE - SECTION 4

14.2 JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS - SECTION 19

Title & Design: Publication Department

Head Office
Chartered Accountants Avenue
Clifton Karachi-75600
Phone: 0092-21-99251636-39
UAN: 111-000-422
Fax: (92-21) 99251626

Regional Office-Lahore
155-156,West Wood Colony
Thokar Niaz Baig,
Raiwind Road Lahore
Phone: (92-42) 37515910-12
UAN: (92-42) 111-000-422
Email: lahore@icap.org.pk

Islamabad
G-10/4,Mauve Area
Islamabad,
Pakistan
UAN: 111-000-422
Fax: (92-51) 9106095
Email: islamabad@icap.org.pk

Quetta Office
Civic Business Center,
Hali Road,
Quetta Cantt
Phone: (92-81) 2865533
Email: Quetta@icap.org.pk

Multan
3rd Floor, Parklane Tower,
Officers' Colony, Near Eid Gaah Chowk,
Khanewal Road, Multan.
Phone: (92-61) 6510511, 6510611
Fax: (92-61) 6510411
Email: multan@icap.org.pk

Peshawar
House No. 30, Old Jamrud Road,
University Town,
Peshawar.
Phone: (92-91) 5851648,
Fax: (92-91) 5851649
email: peshawar@icap.org.pk

Mirpur AJK
Basic Health Unit (BHU) Building
Sector D, New City
Mirpur,
Azad Jammu and Kashmir
Phone: 05828-205296
Cell: 0346-5446690
Email: mirpur@icap.org.pk

Faisalabad
P- 3/33 East Canal road, Muham-
madi Colony , Near Govt. College
of Commerce Abdullahpur,
Faisalabad
Phone: (92-41) 8531028
Fax: (92-41) 8712626
Email: faisalabad@icap.org.pk

Gujranwala Office
ICAP House, 2nd Floor, Gujranwala
Business Center, Opposite
Chamber of Commerce,
Main G.T. Road, Gujranwala.
Phone: (92-55) 3252710
Email: gujranwala@icap.org.pk

Sukkur Office
Admin Block, Sukkur IBA,
Airport Road,
Sukkur.
Phone: (92-71) 5806109 – Ext: 138,
Email: sukkur@icap.org.pk