BUDGET PROPOSALS 2014-15

The Institute of Chartered Accountants of Pakistan

www.icap.org.pk

PRESIDENT'S NOTE

The Institute of Chartered Accountants of Pakistan (the Institute) is committed to work for building a prosperous tax culture in Pakistan in order to achieve a sustained growth. 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.

The Committee on Taxation of the Institute has been constantly making efforts to identify areas where reforms are needed for broadening of 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. The proposals contained in this booklet also include suggestions to remove ambiguities in the tax laws and corrective measures for affective tax administration.

Need of the time is to make apposite decisions to put back the economic activities to its normal course. Adhoc decisions may help achieving short term results but is always ended with economic disaster. It is therefore highly recommended forming a Policy Board which is to be entrusted to review the fiscal policies in the context of its impact on the economy.

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 and the Agriculture sectors are still not fully documented hence their contribution to the national exchequer is extremely low.

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. Moreover the appellate forums need to be strengthened. Appointment criteria for member judicial at ATIR should also be reviewed and only persons with judiciary experience be considered for appointments.

The FBR should crave out a separate division dealing with tax audit. The entire audit process needs to be documented and planned in a systematic manner. There is urgent need of capacity building of the field formation officers with high level of technical skills and specialised training to undertake the challenges of tax audit. An effective audit will act as major deterrent against under reporting, frauds and tax evasion.

The tax on services through provincial laws is creating complications for the genuine tax payers. The Institute strongly stresses for complete harmony among the federal and provincial sales tax laws so relieve the tax payers from undue hassles and unwarranted litigation with tax authorities.

I would like to place on record appreciation for the efforts of the members of the Committee on Taxation for their valuable contribution in developing these budget proposals, and the staff of the Institute for their support.

We trust that these proposals will get due consideration in developing the Finance Bill 2014-15.

Naeem Akhtar Sheikh

1.	**STRUCTURAL REFORMS AND KEY RECOMMENDATIONS**	
1.1	Structural Reforms	7
1.2	Key Recomandations Direct Taxes	8
1.3	Key Recomandations Indirect Taxes	9
2	**DIRECT TAXES**	
2.1	**POLICY ISSUES**	
2.1.1	Rate of Corporate Tax	11
2.1.2	Rate of Minimum Tax	11
2.1.3	Taxation of AOPs of Professionals	12
2.1.4	Taxation of Inter Corporate Dividend Income	12
2.1.5	Listing of Government's Debt Securities	13
2.1.6	Personal Taxation – Tax Credit	13
2.1.7	Set off Losses	14
2.1.8	Incentive to the Compliant Tax Payers	14
2.1.9	Small Company	14
2.1.10	Presumptive Taxation	15
2.1.11	Profit on Debt	16
2.1.12	Tax on Capital Gains (Securities) - Non-Resident	16
2.1.13	Foreign Losses	17
2.1.14	Appointment of the Appellate Tribunal	17
2.1.15	Incentives to Evade Taxes	17
2.1.16	Payments for Goods and Services	18
2.1.17	Export of Services	18
2.1.18	Exemption of Income Received from Annuity or Annuities	19
2.1.19	Condoning of Time Limit by the Board	19
2.2	**DOCUMENTATION, RESOURCE MOBILIZATION AND BROADENING OF TAX BASE**	
2.2.1	General	20
2.2.2	Wealth Statement	20
2.2.3	Withholding Tax on Cash Withdrawal and Issuance of instruments	21
2.2.4	Withholding Tax on Industrial and Commercial	21
2.2.5	Advance Tax collection by the Manufacturer, Importer and Wholesaler	22
2.3	**PROCEDURES AND MISCELLANEOUS**	
2.3.1	Revised Return of Income	23
2.3.2	Grant of Stay by Commissioner (Appeals)	23
2.3.3	Procedure in Appeal	23
2.3.4	Alternative Dispute Resolution	24
2.3.5	Revamping of Income Tax Rules	24
2.4	**REMOVAL OF HARDSHIPS**	
2.4.1	Perquisites and Exemption of Perquisites	25
2.4.2	Limit of Employer's Contribution to Provident Fund	26
2.4.3	Depreciation on Assets under Musharaka Arrangement	26
2.4.4	Group Taxation	27
2.4.5	Group Relief	28
2.4.6	Tax Credit for Investment	28
2.4.7	Minimum Tax – Definition of Turnover	29
2.4.8	Obligation to furnish Return of Income	29
2.4.9	Time limit for Filing of Return of Income	29

2.4.10 Time Limit for furnishing Return of Income upon notice from the Commissioner 30
2.4.11 Collection of Tax in the case of Private Companies and AOPs 30
2.4.12 Due Date for Payment of Tax 30
2.4.13 Payments to Non-Residents 31
2.4.14 Execution of Contract 31
2.4.15 Withholding Tax on Payments for Goods and Services 32
2.4.16 Prescribed Withholding Agents 32
2.4.17 Monitoring of Withholding Tax 33
2.4.18 Compensation to Withholding Agents 33
2.4.19 Additional payment for Delayed Refunds 33
2.4.20 Offences and Penalties 34
2.4.21 Advance Tax on Private Motor Vehicles 34
2.4.22 Domestic Air Ticket 34
2.4.23 Withholding Tax on Promotional Material 35
2.4.24 Deposit of Withholding Tax 35
2.4.25 Banks and Financial Institutions 35
2.4.26 Insurance Companies 36
2.4.27 Transfer Pricing 38

2.5 TECHNICAL AND EDITORIAL

2.5.1 Minimum Tax (Tax on Turnover) 40
2.5.2 Withdrawal of Balance under Pension Fund 41
2.5.3 Certificate of Collection or Deduction of Tax at Source 41
2.5.4 Prosecution for Non-Compliance with Statutory Obligations 42
2.5.5 Default Surcharge 42
2.5.6 Electricity Consumption (Collection of Tax at Source) 43
2.5.7 Exemption of Income of WPPF 43

2.6 LABOUR LEVIES

2.6.1 General 45
2.6.2 Workers' Welfare Fund 45
2.6.3 Workers' Profit Participation Fund 47

3 INDIRECT TAXES

3.1 POLICY ISSUES

3.1.1 Tax Amnesty Schemes 48
3.1.2 Tax Rate & Protection and Promotion of Industrial Sectors 48
3.1.3 Revival of Indirect Tax Settlement Commission or ADRC 48
3.1.4 Overlapping among Federal and Provincial Sales Tax Laws 49
3.1.5 Federal Excise Duty on Services 49
3.1.6 Presumptive / Value Addition / Fixed Tax Schemes 49
3.1.7 Commercial Electricity Connections 50
3.1.8 Incentive for Registered Persons 50
3.1.9 Federal Excise Duties 50
3.1.10 Explanation of Tariff Heading of Chapter 98 50

3.2 HARDSHIP & COMPLIANCE ISSUES

3.2.1 E-filing of Sales Tax Return 51
3.2.2 Withholding Sales Tax 51
3.2.3 Further Tax 51
3.2.4 Joint Liability of Buyer & Supplier 51
3.2.5 Inadmissible Input Tax 51

3.2.6 Debit & Credit Notes 52
3.2.7 Excessive Taxation on Exempt Sector 52
3.2.8 Supply - Section 2(33) 52
3.2.9 Tax Fraud - Section 2(37) 52
3.2.10 Time of Supply - Section 2(44) 53
3.2.11 Sales Tax on Advances - Section 2(44) 53
3.2.12 Time Period for Input Tax Adjustment 53
3.2.13 Tax Credit not Allowed 53
3.2.14 Input Tax Credit on Building Materials 54
3.2.15 Adjustable Input Tax 54
3.2.16 Tax Credit not allowed 54
3.2.17 CREST, Supply Chain & Inadmissible Input Tax 54
3.2.18 Multiple Audits 55
3.2.19 Power to arrest 55
3.2.20 Appeals to High Court 55
3.2.21 Liability for Payment of Tax 55
3.2.22 Condonation of Time Limit 56
3.2.23 Extra Tax on Specified Goods 56
3.2.24 Extra Tax on Electric & Gas Bills 56
3.2.25 Adjustment of Input Tax paid through ‘Bill of Additional Duties’ 57
3.2.26 Taxation of Zero Rated Sectors 57
3.2.27 Taxation of Textile Retailers 58
3.2.28 Appeal Effects 58
3.2.29 Sales Tax at the Retail Price 58
3.2.30 Exemption to Charitable Institutions 58
3.2.31 Active Taxpayers List 59
3.2.32 Inventory Record for Goods Destroyed 61
3.2.33 Initiation of Recovery Action 61
3.2.34 Payment of Arrears through Instalments 61

3.3 FEDERAL EXCISE ACT & RULES

3.3.1 Adjustment of Duty 62
3.3.2 Debit & Credit Note 62
3.3.3 Mandatory Payment before filing Appeal 62
3.3.4 Excise Duty on Royalty 62
3.3.5 Franchise Services 62

3.4 SINDH SALES TAX ON SERVICES ACT 2011 & RULES

3.4.1 Service vs Service Provider 64
3.4.2 Contractual Execution of Work or Furnishing Supplies 64
3.4.3 Construction Contracts 66
3.4.4 Business Support Services 67
3.4.5 Advertisement on Cinema Screens 68
3.4.6 Services falling under the head ‘Others’ 69
3.4.7 Duplicate Entries of Services 69
3.4.8 Insurance Services 70
3.4.9 Withholding Tax 71

3.5 PUNJAB SALES TAX ON SERVICES

3.5.1 Principle of Origin 72
3.5.2 Withholding Tax 72

3.6 KHYBER PAKHTUNKKHWA SALES TAX ON SERVICES

3.6.1 Sales Tax Rules 73
3.6.2 Disparity and Maladministration / Misapplication of Powers by Officials 73
3.6.3 Dual Taxation 73
3.6.4 Tax Invoices 73
3.6.5 Input Tax Adjustment 73
3.6.6 Advertisement on Newspapers, Periodicals and Magazines 73
3.6.7 Joint Liability of Buyer & Supplier 73

1. STRUCTURAL REFORMS AND KEY RECOMMENDATIONS

1.1. STRUCTURAL REFORMS

Formation of Policy Board

In the democratic set up ultimate responsibility of setting aside the policy lies with the Parliament. Such responsibility in supported by the executive authorities in principle for executive functions only. In all the developed societies there is interactive participation of the stakeholders in such policy formulations. In Pakistan on account of lack of democratic structure such process could not be undertaken meaningfully. Taxation policy is the fundamental part of the overall economic policy and planning of the country. This requires Transparency, Participation and Independence.

Under the prevailing economic system, government authorities being regulators, such as Federal Board of Revenue generally operate through a two tier system. One part is engaged in policy formulation whereas the second part is exclusively engaged in execution.

In the first part, it is ensured that there is no conflict of interest primarily for the reason that executive body is directly engaged in collection.

The Institute therefore recommends formation of a Tax Policy Board under the auspices of the Ministry of Finance headed by the Finance Minister. The prime objective of the Policy Board would be to debate and formulate national tax policy in consultation with the stakeholders. The Board may comprise of in broad spectrum, the eminent economists and other stakeholders like FPCCI, Tax Bar Associations, trade bodies, ICAP and other professional bodies.

There has to be a link between the two segments being the Tax Policy Board and Federal Board of Revenue Chairman FBR is to be the member of both the bodies to ensure inter-connectivity and ownership of the policy decision. It may be considered that Member Policy FBR is also the ex-officio member of the Policy Board.

Tax Policy Board should align itself with the Planning Commission and other stakeholders being Finance Committee of National Assembly and Senate.

Strength of Audit Function

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. 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 to create the fear of audit amongst the taxpayers. This failure is stemming due to lack of commitment, 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.

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. We strongly feel that 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. The national audit plan should be chalked out each year based on search 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.

There is an urgent need to build capacity to undertake audit in FBR. The capacity of auditor in the present form where an officer is given a specialized training of nine months is totally inadequate and cannot equip them with the necessary skill required to carry out the tax audit. Therefore, the Government of Pakistan should consider a creation of a special cadre for specialized auditors. This will allow the induction of professionals to meet the challenges of modern tax audit. The specialized cadre should have technical, professional and legal ability to meet the demands of sophisticated and diversified work of tax audit.

Under invoicing

The under invoicing has been drastically increased despite measures taken by the government to check this menace. The General Agreement on Tariff and Trade (GATT) system for customs valuation which was enforced in Pakistan in January 1, 2000 has failed to achieve the desire results due to its being misused by the miscreants leading to huge losses to national exchequer. It may not be wrong to mention that the government is losing 32% of the value not declared.

In the past the Import Trade Price (ITP)-based valuation system was used. The menace of under invoicing was almost controlled due to periodical meetings of different association of importers with the Customs authorities and fixing import prices for custom purposes.

We recommend that the government should consider it seriously and take appropriate measures involving the State Bank and in consultation with the trade bodies. As an initiative to safeguard the national interest ICAP if involved can play advisory role to overcome this problem.

1.2. KEY RECOMMENDATIONS - DIRECT TAX

- Reduce Corporate Tax rate by 2 per cent every year instead of 1 per cent to bring it at par with other competitive economies in next couple of years. (2.1.1)
- Reduce rate of Minimum Tax from 1 per cent to 0.50 per cent. (2.1.2)
- Restoration of taxation regime for AOP's of professionals not permitted to form a limited liability company and equating income of such professionals with income from salary for calculation of tax liability. (2.1.3)
- Exclude inter-corporate dividend from the 'Separate Charge Regime' and revert back to normal tax regime. (2.1.4)
- Inclusion of Government Debt Securities listed on Stock Exchanges in the definition of 'Securities' and taxation of gain on disposal of such securities under section 37A. (2.1.5)
- Restore set off of losses against income from salary and property. (2.1.7)

- Increase of tax credit under section 65A from 2.5% to 5% and admissibility of the credit to all sales tax registered persons where sales are made to NTN holders. (2.1.8)
- Phase out the presumptive (final) tax regime. (2.1.10)
- Exclude 'Profit on Debt' from final tax regime for individuals and AOP's or alternatively incremental taxation thereof. (2.1.11)
- Appointment of Judicial Member of Appellate Tribunal should be only from Judiciary. (2.1.14)
- Immunity from probe of foreign remittances should be abolished or alternatively immunity should be made conditional. (2.1.15)
- Furnishing of Wealth Statement by every individual furnishing a return of income or statement under section 115 should not be compromised. (2.2.2)
- Rate of withholding tax on cash withdrawal and issuance of instruments should be brought at par with Minimum Tax and use of this withholding tax details for broadening of tax base. (2.2.3)
- Impose withholding tax on industrial and commercial gas consumers. (2.2.4)
- Increase rates of withholding tax on industrial and commercial electricity consumers. (2.2.4)

- Collection of advance tax by manufacturers, importers and wholesalers should be extended to all goods instead of specified goods and exemption be provided to NTN holders. (2.2.5)
- Condition of prior approval of the Commissioner to revise a return of income should be dispensed with. (2.3.1)
- Revamping of Income Tax Rules, 2002 (2.3.5)
- Fixed asset used in business to secure finances provided under the Islamic mode of finance (except Ijara/leasing) should be added to the definition of 'depreciable asset'. (2.4.3)
- Petroleum Development Surcharge and Gas Infrastructure Development Cess should be excluded from definition of turnover for the purposes of minimum tax. (2.4.7)
- Carry forward of Minimum Tax in case of loss for the year needs to be clarified. (2.5.1)

1.3. KEY RECOMMENDATIONS – INDIRECT TAXATION

- Tax intelligence system should be effectively brought in place to point out the tax delinquents and bring them into the tax net in order to increase the tax base. (3.1.1)

- Tax rate should be reduced to 15% and should further gradually reduced to 10% over next five years. The reduced tax rate will encourage the unregistered taxpayers to get them registered so that they can avail the benefits of input adjustment. (3.1.2)

- There is need of complete harmony among the provincial sales tax laws so that businesses / service providers may not face undue hassles and unwarranted litigation with tax authorities. (3.1.4)

- All Presumptive / Value Addition / Fixed Tax Schemes should be abolished and all such sectors / goods should be brought under the uniform tax regime. (3.1.6)

- Both the supplier of taxable goods as well as the withholding agent should be provided adjustment of 1% Further Tax. (3.2.3)

- A registered person purchasing goods is jointly and severally liable if the sales tax is not paid by the seller of the goods. It is quite unjustified to punish a genuine buyer. Section 8A should be deleted. (3.2.4)

- There is no provision in the Act to recognize sales tax which becomes a bad debt subsequent to supplier's payment thereof to the exchequer. No time limits should be imposed for issuing credit and debit note or enjoying related tax credit / adjustment. (3.2.6)

- Application of sales tax on advances causes serious operational issues and also leads to discrepancies in CREST and unnecessary reconciliations resulting in hardships to the taxpayers. (3.2.11)

- The compliant taxpayers should not be penalized in terms of Section 8(1)(ca) if the sales tax amount has not been deposited by the supplier. (3.2.16)

- Supply chain involves transactions among multiple buyers and sellers, which cannot be crossed matched by CREST. Accordingly, denial of input tax should not be made on the basis of eventualities. (3.2.17)

- Necessary legislation may be made to allow the taxpayer to make payment of arrears in instalments.(3.2.34)

- The FED should be made adjustable on accrual / paid basis as per section 7 of Sales Tax Act 1990. (3.3.1)

- All excisable services including franchise or royalty may be brought under the VAT mode and taxpayers may be allowed to claim the same from their output tax / duty. (3.3.5)

- A detailed study into legislative history including but not limited to constitutional position may be carried out by Sindh, Punjab & KPK Governments and respective tax authorities to ascertain whether Provinces are also empowered to impose sales tax on 'service providers'. (3.4.1)

- Services forming part of a composite contract should be taxable only if the same fall under the 'taxable services' listed in the Second Schedule to the Sindh Sales Tax on Services Act 2011. (3.4.2)

2. DIRECT TAXES

2.1 TAX POLICY

2.1.1 RATE OF CORPORATE TAX

The Institute had been constantly proposing for reduction of Corporate Tax Rate and to bring it in line with other countries in the region and other developing countries. We appreciate the decision of the Government reflected in the last year's Budget Speech of the Finance Minister to reduce the Corporate Tax Rate gradually to 30 per cent. To start with the corporate tax rate was slashed by 1 per cent, to 34 per cent for the tax year 2014.

The Institute feels that there is a dire need to bring down the corporate tax rate in the minimum possible time to 25 per cent, (instead of presently announced rate of 30 per cent).

The present Corporate Tax rate of 34 per cent 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 per cent. This is effectively a disincentive to multinational groups for locating their manufacturing base in Pakistan. Malaysia and Thailand have also brought down their corporate rate of tax to 25 per cent and 20 per cent respectively, whereas in India tax rate is 30 per cent for Indian Companies. In Europe, where tax rates are generally high, corporate tax rate is however in the range of 20 per cent to 25 per cent.

Moreover the shareholders of the company bear additional tax in the form of withholding tax of 10%. Effective tax rate therefore is 45% which is too high when compared in the Region and internationally.

Recommendation:

- The rate of corporate tax should be reduced by at least 2 per cent every year to bring it at par with other competitive economies and to provide incentive for formation of organized and documented sector.

2.1.2 RATE OF MINIMUM TAX

Minimum tax on turnover was introduced in 1991 with an idea that certain persons should pay tax irrespective of their tax liability at half percent of their turnover. The minimum tax rate remained at half percent of the turnover until 2009. Through Finance Act, 2010 the rate of minimum tax under section 113, was raised from 0.50% to 1.00% and made applicable on certain individuals and association of persons in addition to a company.

The rate of 1.00% minimum tax is very high and results in financial hardships to the taxpayer especially in the current scenario where there are frequent power outages and deteriorating law and order situation in the country. As a result there businesses are struggling to operate even at break-even point. Further, the scheme of minimum tax incorrectly envisages that no business can sustain loss and there should always be a minimum taxable income margin of 2.85% to 4% of turnover in the case of companies and AOPs respectively.

Recommendation:

- Minimum tax rate should be reduced to 0.5%.

2.1.3 TAXATION OF AOP'S OF PROFESSIONALS

Professionals like Architects, Engineers, Chartered Accountants, 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.

This fact was recognized in the repealed Income Tax Act, 1922, repealed Income Tax Ordinance, 1979 as well as Income Tax Ordinance, 2001. However, by omission of sub-section (2), (3), (4) and (5) of section 92 and section 93 of the Income Tax Ordinance, 2001 by Finance Act, 2007, the AOP's of professional firm have been again placed in a disadvantageous position.

Further, the current maximum tax rate of 35% is very much on the higher side.

Recommendations:

- Sub-section (2), (3), (4) and (5) of section 92 and section 93 of the Income Tax Ordinance, 2001omitted by Finance Act, 2007 should be restored.

- The income of the professionals prohibited from incorporating as a limited company should be equated with salary income for the purposes of determining the tax liability.

2.1.4 TAXATION OF INTER CORPORATE DIVIDEND INCOME

At present dividend income is subject to Final Tax at the rate of 10 per cent, including for Companies, and the only exemption is for inter-group dividend, which is exempt from tax 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 in the hands of Companies; resulting that Dividend Income though being a separate block of income taxable at 10 per cent, was eligible for adjustment against business losses, and effectively contain all the features for taxation under normal tax regime. 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.

The Institute feels that Dividend Income should not be taxable in the hands of Company and until such exemption is allowed, Dividend Income should not be taxable under FTR and the position prior Finance Act 2013, should be restored for Companies.

Recommendation:

- The taxation of Dividend Income at 10 per cent, under normal tax regime, as applicable for Companies prior to Finance Act 2013 should be restored.

2.1.5 LISTING OF GOVERNMENT'S DEBT SECURITIES

Recently the Government has issued regulations for listing of its debt securities. The income derived from debt securities would generally be interest income, taxable in the hands of holder of securities; however, in case of dealing / trading of such securities on stock exchange, gain / loss may arise, taxability of which should also be regularized, in line with other securities traded on stock exchange.

Section 37A of the Ordinance, and related rules, followed by Eight Schedule governs the taxability of capital gains on disposal of listed securities. Since the manner and mechanism for taxation of capital gains on disposal of other listed securities is well defined, it is therefore pertinent that Government's debt securities, listed on stock exchange, should also be considered for taxation under section 37A of the Ordinance, to provide incentive the trading thereof.

Recommendation:

- Definition of 'Securities' under section 37A of the Ordinance should be expanded to include 'Government's Debt Securities Listed on stock exchange'.

2.1.6 PERSONAL TAXATION -TAX CREDIT

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 etc. for construction of house.

However, this needs to be rationalized by providing incentives for certain personal expenditure. In Pakistan, there is a need to incorporate planning mechanism that simultaneously encourages documentation and assist in bringing untaxed sector into tax net. This requires introduction of 'tax credit' against personal taxation on submission of evidences of expenses incurred on education of children, rent of residence, medical, medical insurance and legal and professional fees.

Such a credit will provide incentive for the user of such services in obtaining evidences for payments. That will in turn induce the recipient to be within the documented sector. Like other measures, this system had also been introduced in the past. However, due to procedural difficulties and lack of will by the tax executives, positive results could not be achieved.

Recommendation:

- Tax Credit for personal expenditure on education of children, rent of residence, medical expenses, medical insurance and legal and professional fees should be introduced with the condition of submission of evidence of payment with full particulars of the payee including the NTN and application of section 21(l) of the Ordinance.

2.1.7 SET OFF OF LOSSES

Section 56 was amended through Finance Act, 2013, where by loss sustained under the head of 'income from non-speculation business' and 'income from other sources' could not be adjusted against the income under the head 'income from salary' and 'income from property'.

The logic behind this amended is not understandable and it is against the basic concept of taxation of 'Global Income'.

Recommendation:

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

2.1.8 INCENTIVE TO THE COMPLIANT TAX PAYERS - SECTION 65A

To promote tax culture, documentation of economy and increase in the tax base and to provide incentive to compliant taxpayers, manufacturers registered under the Sales Tax Act, 1990, making 90% of their sales to persons registered under the Sales Tax Act, 1990 are given a tax credit of 2.5% of the tax payable.

This is a very narrow and restrictive incentive. There is a need to introduce appropriate measures to reward compliant tax payers on the one hand and achieve the objective of documentation, increase in tax base and incentive to compliant taxpayers.

Recommendations:

- The rate of this tax credit should be increased from 2.5% to at least 5%;
- The condition of making at least 90% sales to persons registered under the Sales Tax Act, 1990 should be replaced with the condition of making sales to NTN holders;
- This tax credit should be allowed to be also set-off against minimum tax and final tax liability as in case of tax credits under section 65B etc.;
- This tax credit should be extended:
    - To all taxpayers; or
    - At least to all tax payers registered under the Sales Tax Act, 1990 instead of only manufacturers.

2.1.9 SMALL COMPANY - DIVISION III, PART I, FIRST SCHEDULE

The concept of 'Small Company' was introduced in 2005 with a reduced rate of tax and exemption from being a withholding agent under section 153 of the Income Tax Ordinance, 2001 as applicable to the non-corporate sector, in order to provide an incentive for businesses conducted in the status of 'individual' and 'association of persons' to convert themselves into corporate structure and be a part of organized and documented sector without any tax burden.

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. As a result an individual and AOP with turnover upto Rs. 50,000,000 continues to be in an advantageous position as compared with a 'Small Company' having similar turnover.

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.

2.1.10 PRESUMPTIVE TAXATION

Presumptive Taxation Regime (PTR) introduced in 1990 is another dogma that needs a serious policy review for a sustainable growth in tax base.

There is unanimity of the view that policy framework for PTR was in principle, introduced to cater for certain negative aspects of Pakistani tax culture. These aspects were:

- Effectively no tax contribution by certain sectors which resulted in a view that at least a minimum presumptive sum be taxed; and
- 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.

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.

An effective tax system can only work where there are identical tax procedures and processes for the same kind or nature of business activities. Furthermore, there has to be no discrimination in incidence by one sector over the other. PTR disturbs both these aspects. There is a need to review PTR in that context.

Through Finance Act, 2012 positive steps have been taken for opting out of presumptive tax regime in respect of Sale of goods, Import of goods and Export of goods, subject to certain conditions, which is highly appreciated. Similar positive steps need to be taken in respect of other sources income currently in the final tax regime.

Recommendations:

- Corporate sector should be excluded from final tax regime unconditionally.
- Alternatively, the corporate sector be excluded form the final tax regime and subjected to minimum tax with the facility to carry forward the diference of actual tax liability and minimum tax for adjustment against the normal tax liability of the subsequent 5 years.
- The scope of opting out of final tax regime for non-corporate sector should be enlarged to include other sources of income currently falling in final tax regime.

2.1.11 PROFIT ON DEBT – SECTION 151 AND 169

Profit on debt (interest, yield, profit) derived by an individual and association of persons is subject to withholding tax of 10% and such tax deducted at source is the final tax on such income (Final Tax Regime).

The current effective tax rate on normal taxable income of a non-salaried individual and AOP upto income of Rs. 1,500,000 ranges from 0% to 10% and where the income exceeds Rs. 1,500,000 the effective tax rate ranges from 10% to 30%.

The Institute feels that the flat rate of final tax of 10% on such profit on debt irrespective of any threshold is much on the lower side where the income of profit on debt exceeds Rs. 1,500,000 per annum. Further, there is no justification in taxing profit on debt in the hands of an individual and association of persons under the final tax regime.

Recommendation:

- Profit on debt in the hands of an individual and association of persons be excluded from the final tax regime; or and assessed under normal tax regime

2.1.12 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. 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:

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) 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 India company........"

Recommendation:

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

2.1.13 FOREIGN LOSSES - SECTION 104(2)

According to section 104(2) 'the foreign losses' are to be carried forward to the following tax year and set off against the foreign source of income chargeable to tax under that head in that year. As a result foreign loss sustained by resident taxpayer is not adjustable against the local income, which is un-realistic and against the concept of taxing global income.

In the repealed Income Tax Ordinance, 1979 there was no such restriction and foreign losses sustained by a resident could be set off against local income.

Recommendation:

- The restriction of set off of foreign losses against subsequent foreign income needs to be removed.

2.1.14 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.

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.

Recommendation:

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

2.1.15 INCENTIVES TO EVADE TAXES

Improvement of tax base essentially requires abolition of any discrimination between taxpayer with adequate penalties for the delinquents but in Pakistan the situation is on the contrary. There are two policy features favouring the delinquents:

Whitening the untaxed money by abusing the various provisions of the law such as 'inward foreign remittance'

By virtue of clause (a) of sub-section (4) of Section 111 of the Income Tax Ordinance, 2001 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.

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 2%.

Regular and persistent system of official whitening of money by way of 'Tax 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. Income tax Ordinance, 2001 has already provided a cushion for those to disclose undisclosed income on paying nominal amount of tax. In the presence of a scheme to disclose undisclosed income, such steps really dent the moral and confidence of taxpayers on the government.

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.

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.

Recommendation:

- Section 111(4)(a) of the Income Tax Ordinance, 2001 should be abolished; or alternatively a 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 subject to tax if it exceeds the limit prescribed by the State Bank of Pakistan which is currently $10,000

2.1.16 PAYMENTS FOR GOODS AND SERVICES - SECTION 153(3)(b)

Rendering of or providing of services subject to deduction of tax at source by the non-corporate sector has been excluded from the ambit of final tax and instead tax deducted at source has been made the minimum tax.

The initiative of restricting the presumptive tax/final tax regime is in line with the earlier recommendations of the Institute and is appreciated.

However, the concept of 'minimum tax' is against the norms of taxation of income and indirectly tantamount to the continuation of presumptive tax regime. This concept to secure the revenue, to start with, is understandable but also needs to be progressively phased out.

Professional service providers, who by their governing statutes are not allowed to get themselves incorporated, is a class of taxpayer for consideration for exclusion from the 'minimum tax' concept.

Recommendation:

- Like corporate sector, professional service providers, who by their governing statutes are not allowed to get themselves incorporated, should also be excluded from the ambit of 'minimum tax' concept. Alternatively, such persons should be allowed to carry forward such minimum tax for next five tax years and adjust against their tax liability on taxable income.

2.1.17 EXPORT OF SERVICES

Exports whether of goods or services are the back bone of any economy and particular of developing economies. 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.

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, Chartered 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 this should be exempted like IT enabled services or alternately brought at par with taxation of income from export of goods.

2.1.18 EXEMPTION OF INCOME RECEIVED FROM ANNUITY OR ANNUITIES

Exemption of income received from annuity or annuities issued by a Life Insurance Companies registered under section 3 of the Insurance Ordinance were available through clause (21) of Part-I of second Schedule to the Income Tax Ordinance, 2001 which was withdrawn by Finance Act, 2008.

Pension received by an employee from its employer is exempt under clause (8), (9) and (12) of the Part-I of the Second Schedule to the Income Tax Ordinance, 2011. 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 to safe guard the interest of senior citizens after reaching the retirement age.

Recommendation:

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

2.1.19 CONDONING OF TIME LIMIT BY THE BOARD – Section 214A

The Federal Board of Revenue 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 provisions of section 214A, prior to amendment made through Finance Act, 2012, was implied that this power can not be used 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.

This amendment is highly pre-judicial to the interest of taxpayers and indirectly gives a blanket power to the Federal Board of Revenue to override the statutory time limit or period of any act or thing to be done by the Income Tax Authorities.

Recommendation:

- Amendments made in section 214A through Finance Act, 2012 should be withdrawn.

2.2 DOCUMENTATION, RESOURCE MOBILIZATION AND BROADENING OF TAX BASE

2.2.1 GENERAL

Un-documented, cash and parallel economy is a menace to our entire taxation system. The major chunk of the state revenue is generated by few sectors of the businesses owned by National and Multi-National companies and corporations. The transport, wholesale, retail and professional services sector of the business has a very low contribution in the tax revenue as compared to their share in GDP.

Our direct tax laws need a major shift to curb this situation. Following are the examples of our existing laws that do not support documentation and resultantly the increase in tax base and resource mobilization:

- Fixed tax or separate block of income;
- A very extensive withholding tax regime coupled with final tax, which has converted direct tax into indirect tax;

Another very significant area for major shift is facilitation of compliant taxpayers and penalization of non-compliant taxpayers. All our direct tax laws are day by day burdening the existing and compliant taxpayers. No measures are being taken to enforce the tax laws on the non-compliant taxpayers.

2.2.2 WEALTH STATEMENT - SECTION 116

The Institute highly appreciates the amendments made in section 116 through Finance Act, 2013 whereby every individual furnishing a return of income was also required to furnish the Wealth Statement irrespective of any threshold of income and tax. However, un-fortunately this initiative of documentation was nullified with the insertion of clause (82) and (83) in Part-IV of the 2nd Schedule.

Although clause (82) and (83) of Part – IV of 2nd Schedule is restricted to tax year 2013 and for the tax year 2014 every individual furnishing a return of income has to furnish the Wealth Statement irrespective of any threshold of income and tax.

The 'Note-4', below the prescribed form of the Wealth Statement requires furnishing of break-up of 'Business Capital' by way of Balance Sheet or a list of assets and liabilities wherever 'Business Capital' has been declared in the Wealth Statement. Contrary to this, the prescribed form of return of income (IT-2) requires furnishing of Balance Sheet where the turnover exceeds Rs. 5 million.

Recommendations:

- ❑ The one time exemption granted under clause (82) and (83) of Part-IV of 2nd Schedule should not be extended.
- ❑ The contradictory requirement of furnishing of Balance Sheet in IT-2 should be omitted.

2.2.3 WITHHOLDING TAX ON CASH WITHDRAWAL AND ISSUANCE OF INSTRUMENTS – SECTION 231A AND 231AA

Undocumented economy is menace to proper revenue generation. To curb this, a positive step is collection of tax on cash withdrawals from an account or deposit etc., maintained with Banking Company and issuance of any instrument against cash by banking company, non-banking financial institution, Exchange Company or any authorized dealer of foreign exchange.

The rate of withholding tax on such transactions of 0.30% is considered to be low as compared to the rate of Minimum Tax on turnover under section 113. Resultantly, un-disclosed business turnover, in undisclosed accounts, are being taxed at a lower rate as compared to the declared business turnover.

Further, over the time it has been observed, that this withholding tax has become a revenue source instead of identification of the un-disclosed transactions and to charge tax on income arising from such transactions.

Recommendations:

- The rate of tax on such transactions should be in line with the Minimum Tax on Turnover under section 113.
- Complete details of tax withheld by banking companies on cash withdrawal should be obtained and utilized for broadening of tax base.

2.2.4 WITHHOLDING TAX ON INDUSTRIAL AND COMMERCIAL CONSUMERS

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.

At present a very large number of taxpayers comprising of small and medium sized industries and the entire wholesale and retail chain are not contributing to the tax revenue in the ratio of their contribution to the GDP. This situation will be further deteriorated with the increased 'zero' tax rate threshold increased to Rs. 400,000, which needs to be taken care of by taking appropriate actions well in time i.e.:

Imposition of withholding tax on industrial and commercial consumers of natural gas

Currently, natural gas consumption by CNG Stations is subject to withholding tax only. A large number of industrial and commercial consumers of natural gas are not paying any tax or paying a very little 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.

Recommendation:

- Withholding tax at the rate of at least 5% and 10% on natural gas consumption by industrial and commercial consumers respectively should be introduced.

Increase in the rate of withholding tax on commercial consumers of electricity

The current rate of withholding tax on electricity consumption by commercial consumers with bill amount upto Rs. 20,000 per month ranges from 6% to 23% whereas for bill amount exceeding Rs. 20,000 it is 10%. This needs to be increased and rationalized for the reasons stated above.

Recommendation:

- The rate of withholding tax on electricity consumption by commercial consumers should be fixed at a flat rate of 25% of electricity consumption.

2.2.5 ADVANCE TAX COLLECTION BY THE MANUFACTURER, IMPORTER AND WHOLESALER SECTION – 236G AND 236H

The purpose of introducing section 236G and 236H through Finance Act, 2013 was to document and put a check and control on the sales and purchases in the supply chain. However, instead of all goods the provisions of these sections is restricted to specified goods and from all persons in the supply chain without any distinction whether he is a compliant or non-compliant.

In case of persons who are already taxpayers this withholding will result into refund claims or decrease in advance tax payment.

Recommendation:

- In order to achieve the objective of documentation the provisions of this section should be applicable on all goods and only on the persons who are not holding NTN.

2.3 PROCEDURES AND MISCELLANEOUS

2.3.1 REVISED RETURN OF INCOME – SECTION 114(6)

In order to revise a return of income a further condition of prior approval of the Commissioner has been imposed. This effectively means to explain to the Commissioner the reasons for revising the return in advance.

It is feared that once the reasons for revision are known to the Commissioner, he/she may refuse to grant approval and instead initiate proceedings under section 177 and/or 122 in spite of the fact that the he had no definite information until the request for revision was made. Thus, there is every possibility of misuse of this power by the Commissioner. Further, there is no time limit prescribed whereby the Commissioner has to grant the approval.

Recommendations:

- The condition of prior approval of the Commissioner to revise a return of income be dispensed with; or
- The law should be suitably amended to restrict the Commissioner for taking any action under section 177 and/or 122 where a request for revision of return has been made.

2.3.2 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 section 128(1A) by Finance Act, 2012. However, the aggregate period of stay that can be granted is only 30 days. In view of the ground realities (flimsy assessments and delay in deciding the appeals) this period of 30 days needs to be suitably increased and brought in line with the powers of the Appellate Tribunal.

Recommendation:

- In section 128(1A), the period of “thirty days” should be substituted with “one hundred and eighty days”.

2.3.3 PROCEDURE IN APPEAL - SECTION 128(4)

The power to set aside the assessment order in an appeal before the Commissioner (Appeals) contained in section 129(1)(a) was withdrawn through Finance Act, 2005. With this change the powers vested in the Commissioner (Appeals), under section 128(4) to cause further inquiry before disposing of an appeal to be made by the Commissioner, has attained a significant importance, in order to enable the Commissioner (Appeals) to give clear cut findings on the matters arising in the appeal before him.

Restricting the further enquiry to be made by the Commissioner alone against whose order an appeal has been preferred by the taxpayer is not fair and judicious, because the results of such inquiry will naturally be biased and tilt to support the order, the Commissioner has originally made (order under appeal).

Recommendation:

- The powers of the Commissioner (Appeals), under section 128(4) to cause further inquiry by the Commissioner should be enlarged enabling the Commissioner (Appeals) to cause further inquiry by an expert or seek an expert opinion.

  Consequently, section 222 of the Income Tax Ordinance, 2001 should also be amended, enabling the Commissioner (Appeals) as well to appoint an expert.

2.3.4 ALTERNATIVE DISPUTE RESOLUTION - SECTION 134A(1)

Through Finance Act, 2009, the scope of cases which could be referred for Alternative Dispute Resolution (ADR) was restricted such that the cases where:

- Prosecution proceedings have been initiated; or
- Interpretation of question of law is involved having effect on other identical cases;

The Rules regarding Alternative Dispute Resolution already provides that "Any such resolution shall not be used as precedent, except as provided in the agreement".

Accordingly restricting the scope of cases that could be referred for Alternative Dispute Resolution is not justified.

Further, under the existing provisions the decision of the ADRC is subject to an overriding approval of the Federal Board of Revenue. Our members 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, which is often done As a result the 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.

Recommendations:

- The position prior to the amendment made through Finance Act, 2009 should be restored.
- The decision of ADRC should be made binding on FBR and only in case of serious reservations and compelling reasons to be given in writing authority may be given to reject the ADRC orders after mandatorily obtaining written permission of the Chairman, FBR.

2.3.5 REVAMPING OF INCOME TAX RULES

It has been observed that most of the Income Tax Rules are not aligned to Income Tax Ordinance, 2001.

Recommendation:

- Income Tax Rules need to be revamped to avoid confusions.

2.4 REMOVAL OF HARDSHIPS

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

Taxation of Notional Income

Under sub-section (7) of section 13 of the Income Tax Ordinance, 2001 the difference between the benchmark rate and the actual rate of interest charged (where actual rate of interest is less than the benchmark rate) by the employers on concessionary loans provided to the employees is treated as perquisite chargeable to tax.

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.

Recommendations:

- The taxation of marginal income on loans obtained from the employer below Benchmark rate should be exempted by making necessary amendments in clause (53A) of the Part I of the Second Schedule and by deleting sub-section (7) of Section 13; or

- 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.

Exemption of mortgage loans (Alternate to above)

The rationale underlying this proposal is that:

(a) Only mortgage loans will be exempted from the applicability of Section 13(7) of the Ordinance whereas all other concessionary loans like auto loans, personal loans will continue to be taxed on the difference between the actual and the benchmark rate;

(b) It will boast 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;

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

(d) 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;

(e) 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.

Recommendation:

- Alternatively at least the mortgage loans be exempted from the operation of section 13(7) of the Income Tax Ordinance, 2001.

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

Through Finance Act 2008, the employer's contribution in the recognized provident fund in excess of Rupees one hundred thousand (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 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. Therefore, it is illogical that when an amount is ultimately exempt, it is taxed at the time of contribution. It is suggested that ceiling of rupees one hundred thousand 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 who will pay to an employee when he retires or resigns from service. Further, the employer's contribution can be withheld by the employer in the 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.

Recommendation:

- Due to multiple complications, the ceiling of Rs. 100,000 should be withdrawn.

2.4.3 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 the Musharaka as profit on debt (interest) and allow the same as a deductible charge to the borrower.

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.

Recommendation:

- It is, therefore, recommended that following Explanation 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."

2.4.4 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.

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. In this regard, we set out below a comparative analysis of a country-wise required percentage of shareholding by the parent company to avail the benefit of group taxation:

Denmark	France	Italy	Spain	UK	USA
50%	95%	50%	75%	75%	80%

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.

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 undergo s delisting and becomes a non-listed company"

2.4.5 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."

Recommendations:

- The Institute is of the view that 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 the 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. It is therefore 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."

2.4.6 TAX CREDIT FOR INVESTMENT - SECTION 65B

Tax credit under sections 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. The word “purchase” gives a narrow meaning and indicates the cost of acquiring the plant and machinery excluding the installation cost thereof. 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.

Recommendation:

- In section 65B(1) after the word 'purchase' the words 'and installation' should be inserted.

2.4.7 MINIMUM TAX – DEFINITION OF TURNOVER – SECTION 113(3)(a)

Petroleum Development Surcharge and Gas Infrastructure Development Cess is a Government Levy and Oil & Gas Distribution companies are only collection agents on behalf of Government in the same manner as sales tax and federal excise.

Accordingly, Petroleum Development Surcharge and Gas Infrastructure Development Cess are required to be excluded from definition of turnover for the purposes of minimum tax.

Recommendation:

- Clause (a) of sub-section (3) of section 113 should be substituted as under:

  "the gross sales or gross receipts, exclusive of <u>Petroleum Development Surcharge, Gas Infrastructure Development Cess</u>, Sales Tax and Federal Excise duty or any trade discounts shown on invoices, or bills, derived from the sale of goods, and also excluding any amount taken as deemed income and is assessed as final discharge of the tax liability for which tax is already paid or payable;"

2.4.8 OBLIGATION TO FURNISH RETURN OF INCOME – Section 114(1)

Through Finance Act, 2013, amendment has been made in section 114(1), where by Members of professional bodies like Pakistan Engineering Council, Pakistan Medical and Dental Council, Pakistan Bar Council, Provincial Bar Council, Institute of Chartered Accountants of Pakistan and Institute of Cost and Management Accountants of Pakistan are required to furnish return of income irrespective of the fact whether they have any taxable income or not.

Many Members of such professional bodies are permanently residing abroad (non-resident) and have retained the membership for other multifarious reasons and do not enjoy any Pakistan Source Income.

Recommendation:

- Non-resident members of the professional bodies may be provided exemption from furnishing of the return of income like in many cases exemption has been provided in section 115(3). Alternatively specific exemption may be provided in Part IV of the Second Schedule to the Income Tax Ordinance.

2.4.9 TIMINGS FOR FILING OF RETURN OF INCOME – SECTION 114

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

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

The institute feels that 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.

Recommendation:

- Due date for filing of income tax return by salaried individuals, non-salaried individuals and AOP's be aligned 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.

2.4.10 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

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. The Institute is of the view that there may be cases where the return could not be furnished within the short time allowed by the Commissioner for genuine reasons.

Recommendation:

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

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

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 a number of provisions in the Income Tax Ordinance, 2001, that do not support the formation of corporate sector which in turns implies non-formation of regulated and documented sector.

One of such provision is section 139 of the Income Tax Ordinance, 2001 placing 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 over here 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.

2.4.12 DUE DATE FOR PAYMENT OF TAX - SECTION 137

Finance Act, 2008 had unreasonably decreased the numbers of days specified for making payment into Government treasury to 15 days.

This curtailment of time resulted into:

- Culture of creating unfair demands and unjustified liabilities by the assessing officers; and

- Short sighted approach adopted by field formations in meeting their tax collection targets, is hampering business confidence building measures adopted by the Pakistan Government during last decade.

Recommendation:

- The original time of 30 days should be restored to remove the hardship faced by the business community and taxpayers.

2.4.13 PAYMENTS TO NON-RESIDENTS – SECTION 152

The law requires that where a payment is not likely to be chargeable to tax, then 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. Since 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.

Recommendations:

- 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.

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

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

Recommendation:

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

2.4.15 WITHHOLDING TAX ON PAYMENTS FOR GOODS AND SERVICES - SECTION 153

As per provisions of Notification SRO 586(I)/91 dated 30-06-1991 withholding tax are 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. 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.

Recommendations:

- 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.

2.4.16 PRESCRIBED WITHHOLDING AGENTS – Section 153(9)

Individual and AOP having turnover of Rs. 50,000,000 or more

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).

The above referred provision of law needs to be appropriately amended so to bring the concept of threshold of turnover with reference to immediately preceding year.

Recommendation:

- The existing provision of law be substituted as under:

  (h) an association of persons, having turnover of fifty million rupees or above for any of the preceding tax years commencing from 2007

  (i) an individual, having turnover of fifty million rupees or above for any of the preceding tax years commencing from 2009

Persons registered under the Sales Tax Act, 1990

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 Sales Tax Act, 1990 have also been made withholding agents without any threshold. These small entities are mainly suppliers to withholding agents under the Income Tax Ordinance, 2001 who fall in the definition of wholesaler under the Sales Tax Act, 1990.

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.

Recommendation:

- A threshold of turnover should be placed on Sales Tax Registered persons for the purposes of being withholding agent so as to exclude small entities from the clutches of obligations of withholding agent.

2.4.17 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 assessee 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 Income Tax Ordinance, 2001 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 Income Tax Ordinance, 2001 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.

Recommendations:

- 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 Income Tax Ordinance, 2001 for monitoring of withholding taxes.

2.4.18 COMPENSATION TO WITHHOLDING AGENTS

Federal Board of Revenue has been availing the services of withholding agents free of charge for quite a long time. 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 penalised for any default which at one hand puts thereon an additional cost.

Recommendation:

- Withholding agents should be allowed to retain 10% of the amount of tax collected as service charges on the principle of natural justice.

2.4.19 ADDITIONAL PAYMENT FOR DELAYED REFUNDS

Under Section 170(4) of the Income Tax 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.

2.4.20 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.

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 a serious hardship to the taxpayers, as now due to this explanation, the 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 short tax paid 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.

Recommendation:

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

2.4.21 ADVANCE TAX ON PRIVATE MOTOR VEHICLES – SECTION 231B

Currently advance tax under section 231(b) applies on purchase of locally manufactured motor vehicles.

Persons such as Modaraba have to bear this tax on the motor vehicles leased by them. On the other hand Modaraba 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.

Recommendation:

- Modaraba should be exempted from payment of advance tax under section 231B in respect of vehicles leased by them.

2.4.22 DOMESTIC AIR TICKET

In case of domestic air ticket, advance tax of 5% is deducted by the airline 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 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.

2.4.23 WITHHOLDING TAX ON PROMOTIONAL MATERIAL- SECTION 156

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.

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 Income Tax Ordinance, 2001.

Recommendation:

- The 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"

2.4.24 DEPOSIT OF WITHHOLDING TAX

Previously withholding agents were required to deposit withholding tax within seven days from the end of each fortnight however by virtue of SRO # 392 19-05-2009 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.

2.4.25 BANKS AND FINANCIAL INSTITUTIONS

Allowability of 1% or 5% of advances as 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. 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.

Recommendation:

- An explanation should be inserted in Rule 1(c) of the Seventh Schedule that total advances means 'Gross Advances' before the accounting provisions for Bad & Doubtful Debts.

Group Relief

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. 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.

Recommendation:

- The clause should be amended to remove the condition of both companies (holding and subsidiary) to be banking companies. Accordingly the provisions relating to group relief as contained in section 59B shall be available to the banking companies.

2.4.26 INSURANCE COMPANIES

Determination of the 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”.

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. The suggested change is set out in the next sub-section.

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."

Deduction of tax at source (as recipient)

In the case of banking companies subject to Seventh Schedule under Rule 5 (2), an exemption has been provided to banks from withholding tax as 'recipient' as such entities are all in organized sector and are subject to advance payment of tax.

Recommendation:

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

Capital gains on securities

Consequent to withdrawal of exemption of capital gains contained in Rule (6A) and introduction of tax on securities by insertion of section 37A, new Rule (6B) was inserted in Fourth Schedule to provide tax rate on capital gains on securities in the case of insurance companies. The proviso of this rule states as under:

"Provided that this rule shall not apply to the securities held for a period of more than twelve months".

Unlike the rates provided for the purpose of section 37A of the Ordinance, the rate card provided in rule (6B) does not provide zero rate for capital gains on securities held for a period of more than twelve months.

The very intention of the above proviso is akin to provisions of section 37A whereby capital gains on securities held for a period of more than twelve months should not be chargeable to tax, but the wordings of the proviso does not reflect such intention in clear terms.

Recommendation:

- Proviso to Rule (6B) should be amended in the manner that capital gains on disposal of specified securities held for a period of more than twelve months will be exempt from tax.

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 grab of section 151 of the Income Tax Ordinance, 2001. The relevant section is as follows:

"151. Profit on debt:- Where

(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."

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.

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.

Recommendation:

- 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)."

2.4.27 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 Income Tax Ordinance, 2001 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 Income Tax Ordinance, 2001. Furthermore, it has been specifically provided that such laws will be implemented in line with the guidelines laid down by OECD.

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. All the cases from Tax Year 2004 to Tax Year 2008 are effectively exposed to action by the tax officers on that matter. 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, it is expected that problems which arose under the repealed Act are expected to be repeated notwithstanding the improved and well laid down laws. That eventuality has to be avoided.

Recommendations:

- 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.

2.5 TECHNICAL AND EDITORIAL

2.5.1 MINIMUM TAX (TAX ON TURNOVER) - SECTION 113

Carry forward and adjustment of Minimum Tax

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).

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, which is clear from the Finance Minister's budget speech of June 12, 2004.

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."

Adjustment of tax credits under section 65B, 65D and 65E against minimum tax liability

Minimum tax under section 113 is payable where normal tax liability is less than the minimum tax for any reason including the application of tax credits or rebates under the Ordinance (Section 113(1)(d)).

Similarly, section 169(2)(d) does not allow set-off of tax credits in respect of final tax.

On the other hand the tax credits under section 65B, 65D and 65E can be set-off against Minimum Tax as well Final tax.

Thus the provisions of section 113(1)(d) and 169(2)(d) are not aligned with section 65B, 65D and 65E.

Recommendation:

- To remove the above ambiguity, is proposed to substitute section 113(1)(d) and 169(2)(d) as under:

  "113(1)(d) the application of credits or rebates, excluding credits under section 65B, 65D and 65E of this Ordinance;

  "169(2)(d) the tax deducted shall not be reduced by any tax credit allowed under the Ordinance, except tax credits under section 65B, 65D and 65E of this Ordinance;

Alignment of Minimum tax with tax payable under clause (41AA) of Part-IV of 2nd Schedule.

Where a taxpayer opts out of the final tax regime under Clause (41AA) of Part-IV of 2nd Schedule, the minimum tax liability under normal tax regime should be at least 50% of the final tax liability under section 154.

The rate of final tax under section 154 on export proceeds is 1% and where the taxpayer opts out of final tax regime under Clause (41AA) of Part-IV of 2nd Schedule, the normal tax liability will be less than 1% of the turnover. However, on the other hand such taxpayer will have to pay Minimum tax under section 113 at the rate of 1% (current rate of Minimum Tax). Thus the benefit of opting out of final tax regime under the said clause is in-directly denied. This ambiguity and inconsistency needs to be corrected.

Recommendation:

- In clause (11) of Part-IV of 2nd Schedule, following should be inserted:

  "(xviii) a taxpayer who opts out of final tax regime under clause (41AA) of this Part."

2.5.2 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."

2.5.3 CERTIFICATE OF COLLECTION OR DEDUCTION OF TAX AT SOURCE – SECTION 164

Under section 164(2) a taxpayer is required to attach copies of challan(s) of payment of tax, 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.

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.

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.

2.5.4 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.

2.5.5 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 147(6) [estimate of advance tax liability] is less than 90% of the tax chargeable for the relevant tax year.

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.

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”.

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

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. As a result 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.

Recommendation:

- In section 235(4) instead of threshold of Rs. 30,000 of each electricity bill amount 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.

2.5.7 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.

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".*

Recommendation:

- In view of the above it is imperative that 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."

2.6 LABOUR LEVIES

2.6.1 GENERAL

During the first tenure of the present government in 70's, labour levies were introduced to let the labourers share the benefit in the profits of the companies. Nevertheless, over the last three decades, such levies have been abused in such a manner that this social benefit has become a tool for exploitation in the form of high tax rate. In Pakistan, the effective corporate tax rate is 35 percent plus 2 percent Workers' Welfare Fund (WWF) and 5 percent Workers' Profit Participation Fund (WPPF). This effectively makes the rate equal to 41 percent which may be one of the highest corporate tax rates in the world. There is a need to immediately review the same.

Recommendation:

- Consolidation of all labour levies with a rate of 2 to 3 percent in line with regional standards.

2.6.2 WORKERS' WELFARE FUND [WWF]

Every business establishment is required to pay a 2 percent WWF at higher of taxable income or accounting profit. The amount is collected along with the income tax. This levy effectively places the organized sector at serious disadvantage viz-à-viz unorganized sectors which are prone to under declaration of income.

Workers Welfare Fund is levied under Workers Welfare Ordinance 1971 on all industrial establishments operating in Pakistan. Upto 30th June 2008 it was levied as 2% of the total income as determined under the Income Tax Ordinance 2001. Certain changes were introduced in the Finance Act 2006 to amend the concept of total income. In order to implement the above change, further amendments were made in Section 4 of the above Ordinance by Finance Act 2008. The above amendments have changed the total scheme of Workers Welfare Fund and the burden of Industrial Establishment on account of Workers Welfare Fund has increased manifold.

We are not aware of any instance where labourers employed have directly or indirectly been benefited by any scheme undertaken out of such funds. This places serious question on the continuity of this levy. For effective use of WWF it is advised that the employers be allowed to retain certain portion of the contribution enabling them to make investments for welfare of workers.

Further, the scope of this levy has been extended to almost all entities by inclusion of establishments covered under the Shops and Establishment Act, 1969 in the definition of Industrial Establishment in the Workers Welfare Ordinance, 1971. Historically, this levy was restricted to 'Establishments' where industrial labour/workers were involved.

Effect of Changes:

The concept of total income was changed and the same was defined to mean as under:

"(i) " total income" means:

(i) where Return of Income is required to be filed under this Ordinance, the profit (before taxation or provision for taxation) as per accounts or the declared income as per the return of income whichever is higher; and

(ii) where return of Income is not required to be filed, the profit (before taxation or provision for taxation) as per accounts or four per cent of the receipt as per the statement filed under section 115 of the Ordinance, whichever is higher."

The effects of above change in the definition of 'total income' under the Workers Welfare Ordinance, 1971 are discussed as under:-

Tax payers filing Return of Income:

In case of income liable to tax under normal law the return of Income is required to be filed. In such circumstances, the Workers Welfare Fund is payable at 2% of the income as per the accounts or income as per the Income Tax Ordinance whichever is higher.

It is to be noted that main difference between accounting income and taxable income arise on account of timing difference in claiming of depreciation allowances. In taxation law, initial depreciation is allowed on all new assets purchased by the taxpayer in addition to normal depreciation. Moreover, the rate of depreciation may also differ in accounting and tax laws. Therefore, the taxing higher of the both income would mean that the taxpayer will be denied the genuine expense of depreciation. In other words, the Workers Welfare Fund would be charged without allowing deduction of major expense in shape of investment made in the project. Therefore, the Workers Welfare Fund would be payable on income which is not real income of the industrial undertaking. The above treatment is not legally tenable and is also against the spirit of Workers Welfare Fund which allows the workers to participate in genuine profits of the industrial undertaking.

Moreover, under the International Financial Reporting Standard, the income of the subsidiary/associated company is also clubbed in the accounting income of the holding company under equity method. Therefore, in these circumstances, accounting income and holding company may include income of subsidiary, which has either itself paid the Workers Welfare Fund on its income or is not an industrial undertaking at all. Under the new scheme, the company will be burdened to pay Workers Welfare Fund on income of subsidiary which is totally unreasonable and not legally tenable.

Tax payers filing Statement of Final Tax (PTR cases)

This scheme is for all those cases which fall in the presumptive tax regime and are not required to file the return of income. Under the above regime the tax payer will be required to pay the Workers Welfare Fund on higher of profit as per accounts or 4% of the receipt.

It practically means that even a loss making unit has to pay Workers Welfare Fund at 2% of 4% of receipt as the same will be higher in case the company is making loss as per accounts. This treatment is against the basic concept of Workers Welfare Fund scheme and put extra burden on industrial undertaking.

Recommendations:

- The Workers Welfare Fund may be charged on a consistent basis based on taxable profit as under the old scheme;
- Employers should be allowed to retain certain portion of the contribution enabling them to make investments for welfare of workers;

- The pre-amended position be restored for restricting the levy to establishments where industrial labour/workers are involved for whose benefit the fund was originally established i.e. establishments covered under the Shops and Establishment Act, 1969 should be excluded.

2.6.3 WORKERS' PROFIT PARTICIPATION FUND [WPPF]

The Income Tax Ordinance, 2001 ("Ordinance") provides exemption in the hands of workers receiving sums out of the WPP Fund vide Clause (26) of Part I of the Second Schedule and allows deduction of the sum allocated to the WPP Fund by the Company vide section 60B of the Ordinance.

Under the law all business establishments are required to contribute a sum equal to 5 percent of the profit as WPPF. This amount is in principle required to be distributed amongst the workers of that establishment. However, due to constant and intentional bureaucratic mismanagement this share of labour in profit has been converted into a direct levy for such establishment.

This intentional mismanagement has been undertaken by placing unnatural and unreasonable restrictions on the distribution of such amount. Under the law only the workers getting salary of a very low level are entitled to receive any sum out of such fund. Any excess not so distributed amongst the workers is transferred to the Fund that effectively ends up with the Government. Thus for all practical purposes it is Government levy.

In the case of organized sector, the salary and wages of the workers are such that in almost all the cases workers do not get any sum out of WPPF. This is definitely not the objective of WPPF.

Recommendations:

- Allow the establishments to utilize the contribution of WPPF for the welfare of labour in the form of providing health, education and housing for the labour. This was exactly the intention of the law when it was introduced.

- Enhance the threshold of worker's salary in line with current prevailing structure.

3. INDIRECT TAXES

3.1. POLICY ISSUES

3.1.1. TAX AMNESTY SCHEMES

ICAP has always opined that tax amnesty schemes not only prove inefficient for revenue generation but also encourages tax evasion and illegitimate avoidance since the businesses tend to believe that future amnesty measures would help them legalise all their out of books transactions.

The Institute believes that tax evaders must be dealt with strictly. Tax intelligence system and the process of survey and search should be effectively brought in place to point out the tax delinquents and bring them into the tax net in order to increase the tax base, which will ultimately help in boosting the revenue collection and lead to reduction in tax rate.

3.1.2. TAX RATE & PROTECTION AND PROMOTION OF INDUSTRIAL SECTORS

Present rate of 17% Sales Tax with an additional 3% value addition tax, on commercial Imports is a bottle-neck in inducing people to come within tax net besides also contributing towards inflation.

Tax rate should be reduced to 15% and should further gradually reduced to 10% in the following five years. The reduced tax rate will encourage the unregistered taxpayers to get them registered so that they can avail the benefits of input adjustment which is currently not available to unregistered persons.

The Institute is 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 awarded to certain sectors / classes of goods should be rationalized and accordingly minimized.
- Reduced Rates of Taxes for five major sectors viz. textile, leather, carpet, sports and surgical goods should be enhanced gradually and brought at par with standard rate of sales tax for local supplies

3.1.3. REVIVAL OF INDIRECT TAX SETTLEMENT COMMISSION OR ALTERNATIVE DISPUTE RESOLUTION COMMITTEE (ARDC)

In order to curb the ever increasing and never ending litigation and disputes between taxpayers and tax department, the Institute suggests that the concept of Indirect Tax Settlement Commission may be revived. The Commission, to be headed by Grade 21 Officer, should be empowered 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.

Through Finance Act, 2009, the scope of cases which could be referred for Alternative Dispute Resolution (ADR) was restricted such that the cases where:

- Prosecution proceedings have been initiated; or
- Interpretation of question of law is involved having effect on other identical cases;

Since resolution under Alternative Dispute Resolution is not used as precedent, ICAP feels that restricting the scope of cases that could be referred for Alternative Dispute Resolution is not justified.

Further, under the existing provisions the decision of the ADRC is subject to an overriding approval of the Federal Board of Revenue. Our members' 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, which is often done. As a result, 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.

Hence, the Institute recommends that the position prior to the amendment made through Finance Act, 2009 should be restored; and the decision of ADRC should be made binding on FBR and only in case of serious reservations and compelling reasons to be given in writing authority may be given to reject the ADRC orders after mandatorily obtaining written permission of the Chairman, FBR.

3.1.4. OVERLAPPING AMONG FEDERAL AND PROVINCIAL SALES TAX LAWS

Services rendered, initiated or consumed in the Province of Sindh, KPK and Punjab are being taxed under the respective Provincial laws. However, there are certain overlapping tax regime under the Federal and provincial laws e.g. Toll Manufacturing, Franchise Services, Restaurants, etc. on which both Federal Government as well as Provincial Tax Authorities are is also demanding tax. This situation is causing a lot of confusion, harassment and litigation.

The Institute strongly stresses for the need of complete harmony among the provincial sales tax laws so that businesses / service providers may not face undue hassles and unwarranted litigation with tax authorities.

3.1.5. FEDERAL EXCISE DUTY ON SERVICES

Notwithstanding certain services being taxed under independent Provincial Sales Tax Laws in vogue in Sindh, KPK and Punjab, such services are still taxable under both the Federal Excise Act 2005 as well as under Provincial Sales Tax Laws, which tantamounts to double taxation.

Accordingly, the Institute suggests that Federal Excise Duty on all services rendered in Sindh, KPK or Punjab may be abolished.

3.1.6. PRESUMPTIVE / VALUE ADDITION / FIXED TAX SCHEMES

In line with VAT International Best Practices, all Presumptive / Value Addition / Fixed Tax Schemes should be abolished and all such sectors / goods may be brought under the uniform tax regime.

3.1.7. COMMERCIAL ELECTRICITY CONNECTIONS

At present large number of persons doing business either as retailer or manufacturer on small scale and are not registered. In order to bring such persons into the tax net, it is suggested that condition of having NTN should be made mandatory for new commercial electricity connections and for three phase electricity connections used for manufacturing purpose, registration for sales tax should be made mandatory.

3.1.8. INCENTIVE FOR REGISTERED PERSONS

Extra incentive may be offered to the registered persons, if they deal only with registered and organized sectors. This may be in the shape of fixed or variable tax credit(s) at the end of the year.

3.1.9. FEDERAL EXCISE DUTIES

The Minister for Finance & Revenue, in PPP's previous Government, had announced on the floor of the house to do away with excise duty in near future. The Institute believes it's time to move forward in this direction and to adopt and implement a single indirect tax in the country, i.e., Sales Tax.

3.1.10. EXPLANATION OF TARIFF HEADING OF CHAPTER 98

In the absence of any explanatory notes / material regarding Chapter 98 of the Customs Act 1969, service providers are facing immense problems in classification of headings and sub headings thereof. In particular, sub headings titled "Others" are creating enormous disputes among the taxpayers and FBR. Various cases have also been made against service providers like banks, etc. which are now pending in litigation thereby causing undue hardship for both the tax department and taxpayers.

It is suggested that specific nature and scope of all tariff heading and sub headings in Chapter 98 may be issued by the Federal Board of Revenue to avoid unnecessary hardship being faced by businesses.

3.2. HARDSHIP & COMPLIANCE ISSUES

3.2.1. E-FILING OF SALES TAX RETURN

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

3.2.2. WITHHOLDING SALES TAX- SRO 660(I)/2007

The menace of undocumented and *benami* business is the root cause of our economic ills. Rule 5 Sales Tax Special Procedure (Withholding) Rules, 2007 provide exemptions to certain goods from the purview of sales tax withholding. It is recommended that except for POL products and utilities, such exemptions may be done away with to provide a level playing field for the businesses.

Alternatively, all such exemptions may be notified with respective PCTs to avoid confusion regarding exemption or otherwise of such goods.

3.2.3. FURTHER TAX – SECTION 3(1A)

Further tax has always been adjustable against output tax even in the past. However, notwithstanding absence of any restriction under Section 8 of Sales Tax Act 1990 (the Act) the field tax authorities are disputing taxpayers right of adjustment of further tax against output tax. Simultaneously, withholding tax agents are also being denied identical credit.

It is recommended that both the supplier of taxable goods as well as the withholding agent should be provided adjustment of 1% further tax.

3.2.4. JOINT LIABILITY OF BUYER & SUPPLIER - SECTION 8A

In terms of Section 8A of the Act, a registered person purchasing goods is jointly and severally liable if the sales tax is not paid by the seller of the goods. It is quite unjustified to punish a genuine buyer for an offense committed by corresponding supplier.

This section is also inequitable where a person is penalized for an offense he has not committed. After verifying the seller status at the time of purchase, it is not the purchaser's responsibility to monitor future acts & offenses committed by the former. Accordingly, it is recommended that Section 8A should be struck off from the Act.

3.2.5. 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 statue.

(d) For Income Tax Purposes, FBR's Circular 01 of 2009 allows adjustments of payment through ledger accounts. However, the same is not allowed under the Act. 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.

(e) At present, gas / electricity and petroleum sectors are caught by the vicious circular debt problem and payment of invoices are delayed because of their liquidity issues. Utility companies may, therefore, be exempted from the application and requirement of Section 73 of the Act.

It is recommended such anomalies may be taken care off and removed.

3.2.6. DEBIT & CREDIT NOTES - SECTION 9

There is no provision in the Act to recognize sales tax which becomes a bad debt subsequent to supplier's payment thereof to the exchequer.

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. At least, the minimum time period should be extended to 365 days.

3.2.7. EXCESSIVE TAXATION ON EXEMPT SECTOR - SECTION 13

There are certain industries / sectors which have not been brought under the sales tax net. However, such sectors are prone to excessive taxation at input stage. For instance, pharmaceuticals finished products are exempted from sales tax and their prices are also government regulated. Nevertheless, pharmaceutical companies have to suffer sales tax on their procurements which is then added to the cost of product thereby enhancing the sales prices of medicines.

In order to bring down the cost of medicines, it is recommended that instead of exemption, all pharmaceutical products may be zero rated so that input tax suffered by manufacturers / importers may be refunded to them and not added to the cost of products.

3.2.8. SUPPLY - SECTION 2(33)

The amended definition of the term 'supply' does not include the term "Other Disposition" as part of supply. "Other Disposition" was discussed in Para 1(E) of Sales Tax General Order (STGO) No. 2/2004 dated 12 June 2004 wherein the FBR had opined that return of goods by the vendor back to the principal tantamount to "Other Disposition" and accordingly liable to sales tax.

In order to align Section 2(33) of the Act with STGO, it is recommended that Part 1(E) of STGO 2/2004 may be rescinded.

3.2.9. TAX FRAUD - SECTION 2(37)

Currently supply of taxable goods without getting registration with the department is treated as 'tax fraud' on the part of the supplier. Therefore a genuine businessman is facing problems to commence his business till the time he is awarded his sales tax registration number. On the contrary, supply of taxable goods without getting actually registered could penalize him with the most serious offence of 'tax fraud' under the Act.

It is recommended that Registration mechanism should be further streamlined within FBR. To provide safe guard to genuine businesses from the ambit of Tax Fraud, the concept of Provisional Certificate may be introduced whereby anyone applying for registration may be allotted a Provisional Certificate to facilitate his business activity till he is allotted a Permanent Registration Number.

3.2.10. TIME OF SUPPLY - SECTION 2(44)

There is a need to clarify tax incidence on 'hire purchase' transaction. As it involves periodical instalments received/earned over a period of time, charging 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.

It is, therefore, suggested that the definition of 'time of supply' may be amended and tax should not be levied at the time of signing of HP arrangement. Accordingly, 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.

3.2.11. SALES TAX ON ADVANCES - SECTION 2(44)

Prior to amendment made in section 2(44) of the Act through Finance Act 2013, Sales tax was levied at the time of actual delivery of goods regardless of time of payment.

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

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

3.2.12. TIME PERIOD FOR INPUT TAX ADJUSTMENT

Section 7(1) of the Act allows input tax adjustment up to 6 months which was previously 1 year.

The Institute recommends that time limit of 6 months should be increased to 1 year as there is no loss of revenue involved in such matters.

3.2.13. TAX CREDIT NOT ALLOWED - SECTION 8

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.

It is, therefore, 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 the round the clock supervision of production activities is indispensable and plants are based at remote locations.

3.2.14. INPUT TAX CREDIT ON BUILDING MATERIALS –SECTION 8 / SRO 490/2004

SRO 450 dated May 27, 2013 disallows input tax on sales tax paid on purchase of building materials even when these are used for the purpose of construction of projects assisting the taxable activity. The Institute feels that such restriction on legitimate tax credits discourages investment in large projects that will further reduce the economic activity of the country. We also understand that such projects do not contribute any output tax to the Government Exchequer. Hence, barring input tax credit is not fruitful and should be restored accordingly. This will reduce the cost of projects especially alternate energy projects which will also encourage investment and in the long term, beneficial for revenue generation for GOP.

3.2.15. ADJUSTABLE INPUT TAX - SECTION 8B

The concept of mandatory payment to the exchequer across the board was first introduced in the statute vide Section 8B which primarily was inserted in the law to guarantee certain monthly cash flows to the exchequer in the form of sales tax. Any provision requiring mandatory payment from taxpayers and deferring their legitimate refunds is not justified in any fiscal law.

Therefore, it is imperative that the sword of Section 8B may be removed from the statute.

3.2.16. TAX CREDIT NOT ALLOWED - SECTION 8 (1)(ca)

Section 8(1)(ca) of the Act debars a registered person from claiming or deducting input tax paid on goods (or services) in respect of which sales tax has not been deposited in the Government treasury by the respective supplier. The provision is quite harsh treatment with the compliant taxpayer who has been penalized by the wrong doing of tax evaders. Recently, the Lahore High Court also took cognizance of such discrimination and has struck down Section 8(1)(ca) from the statute.

The Institute opines that compliant taxpayers should not be penalized if the sales tax amount has been paid to the supplier that can be verifiable through banking transaction from both the banks accounts of the supplier and buyer under section 73 of the Act.

3.2.17. CREST, SUPPLY CHAIN & INADMISSIBLE INPUT TAX - SECTIONS 2(5AC), 2(33A) & 8(1)(caa)

In order to address the growing menace of misreporting, non-reporting, mismatching, etc. in buyers and sellers tax returns, the FBR had introduced Computerized Risk-Based Evaluation of Sales Tax (CREST) software to confirm buyers' tax credit against seller's output tax payment. This was followed by insertion of definition of term 'supply chain' to mean the series of transactions between buyers and sellers from the stage of first purchase or import to the stage of final supply. Also Section 8(1)(caa) was amended to disallow input tax on purchases in respect of which CREST discrepancy is indicated or input tax of which is not verifiable in the supply chain.

Supply chain involves transactions among multiple buyers and sellers, which cannot be evaluated, analyzed and crossed matched by CREST. Accordingly, denial of input tax of a legitimate business transaction cannot and should not be made on the basis of eventualities, starting from the stage of the first purchase or import till the stage of final supply, which are mostly beyond the control of both buyer and seller.

Furthermore, Section 8(1)(caa) also does not addresses the following key issues:

a) Rationale of tax disallowance

b) The specific person in the supply chain whose input tax could be disallowed in the circumstances

c) How can a mere indication of a discrepancy, which often arise due to timing differences envisaged in section 7(1) of the Act and it is reconcilable, can lead to denial of input tax credit ?

d) What if the supply chain breaks between registered and un-registered parties ?

e) The term 'verifiable' has not been explained in Section 8(1)(caa)

The Institute recommends that all the foregoing issues arisen out of unwise implementation of CREST should be analysed and corrective measures taken to avoid frivolous litigation on this account.

3.2.18. MUTIPLE AUDITS – SECTION 25 & 38

Quite often, tax authorities conduct multiple audits of same tax period under different nomenclatures i.e., annual audit, investigative audit, desk audit, audit for abnormal profile, etc.

In terms of Section 25 of the Act, the tax department may conduct audit of registered person only once a year. Also, the terms 'Desk Audit', 'Investigative Audit' 'Abnormal Tax Profile' have not been defined in the statute. In addition, law provides a specific and subjective criteria and mechanism for conducting investigative audits under Section 38, which cannot be used as a tool for harassment and revenue generation.

Therefore, the Institute recommends that no audit may be initiated unless specific scope, guideline and mechanism thereof are available in the law. Moreover, all audits should be conducted strictly in terms of law and not otherwise.

3.2.19. POWER TO ARREST - SECTION 37A

This section should only be applicable where the case of tax fraud has already been established at the stage of Order-in-Appeal.

3.2.20. APPEALS TO HIGH COURT - SECTION 47(8)

It is proposed that section 47(8), which allows stay to the extent of 6 months only, may be deleted.

3.2.21. 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.

In the Income Ordinance 2001, such matters are covered under section 139 which comprehensively deals with the liability both in case of company and association of persons. ICAP recommends Section 139 needs to be replicated in the Sales Tax Act on the similar lines.

3.2.22. CONDONATION OF TIME LIMIT - SECTION 74

In terms of Section 74 of the Act, the Board and the Commissioner IRS 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 permission 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. Such cases, therefore, land before the Federal Tax Ombudsman's (FTO) Office, which results in wastage of time, energy and cost of the affected taxpayer.

The Institute suggests that a detailed mechanism may be laid down by the Board regarding condonation cases to avoid malpractices, blatant use of discretionary powers and reduce cost of doing business.

3.2.23. EXTRA TAX – SECTION 3(5) & SRO 895 / 896 DATED 4 OCTOBER 2013

All items which have been excluded from the Third Schedule vide SRO 895(I)/2013 dated 4th October, 2013 have been subjected to 2% extra tax in terms of section 3(5) of the Sales Tax Act, 1990. For this purpose, amendments have been made in Chapter XIII of the Sales Tax Special Procedure Rules, 2007. Accordingly, such specified goods are subject to extra tax @ 2% in addition to 17% sales tax, while such tax paid is not allowed as input sales tax under Section 8(1)(c) of the Act, which results in increase in cost of doing business specifically for the manufacturers consuming such goods as industrial input.

The Institute recommends that extra tax should not be levied or collected on sale of specified goods to industrial sector or persons holding the status of a 'manufacturer'. For this purpose, the following amendments are being proposed:

In Section 8(1)(c) of the Act, the existing provision should be modified as follows:

> *"the goods, other than those supplied to registered manufacturer, under sub-section (5) of section 3."*

Secondly, amendment is also suggested in Rule 58S as follows:

> *"the provisions of this Chapter shall apply to supplies of goods, other than supplies made to registered manufacturer, specified in the following Table, hereinafter referred to in this Chapter as "the specified goods".*

3.2.24. EXTRA TAX ON ELECTRIC / GAS BILLS – SRO 509 (2013)

In term of S.R.O. 509(I)/2013 read with Special Procedures thereof, every electric power and gas distribution company/organisation 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 maintain by the Federal Board of Revenue.

The above 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.

3.2.25. ADJUSTMENT OF INPUT TAX PAID THROUGH 'BILL OF ADDITIONAL DUTIES'

A registered person is entitled to deduct input tax paid through the "Bill of Additional Duty (BOAD)" from output tax as he holds the Original Bill of Entry or Goods Declaration in this name, showing his sales tax registration number and duly cleared by the Customs Authority. However, taxpayers are facing hardship in adjustment of sales tax paid through BOAD while e-filing the sales tax return as input tax adjustment in respect of sales tax paid through BOADs is neither automatically uploaded by Annexure B to the sales tax return available at eFBR Web Portal nor the same can be entered manually by the taxpayers. In other words, despite being a legal right under section 7(2)(ii) of the Act, input tax credit paid on BOAD is not being claimable. FBR and PRAL authorities contend that the same is a system weakness.

The Institute recommends the FBR to make necessary adjustment in e-filing program thereby enabling the taxpayers to enter BOAD in Annexure B; until such time the same is linked with the Customs data.

3.2.26. TAXATION OF ZERO RATED SECTORS - SRO 1125

By virtue of revamped taxation scheme of zero rated sectors, i.e., textiles, leather, etc., zero rating has been transformed into reduced rate regime. Consequently, those sectors which were earlier covered in SRO 647(I)/2007 dated 27 June 2007 cannot now adjust input tax in excess of 90% of output tax.

Due to seasonal items, there is refund or carry forward position (when the sales is low but manufacturing continues) in certain months whilst payable situation in other months. These lead to extra burden especially during the period when sales are low. Moreover, SRO 1125 covers only those raw materials which are only used for 5 sectors. However, these industries use certain other inputs like raw materials and packing material, not subject to reduced rate of tax. This situation often leads to refund especially due to 10% payment owing under Section 8B.

To address this hardship, the Institute recommends that Serial No. 7 of SRO 647 of 2007 may be substituted as follows:

> *"Person making zero-rated or reduced-rated supplies provided value of such supplies in aggregate exceeds 50% of value of all taxable supplies in a tax period."*

3.2.27. TAXATION OF TEXTILE RETAILERS

SRO 1125 specifies payment of sales tax @ 5% on sale of garments, finished textile articles. However, Chapter II of Sales Tax Special Procedure Rules 2007 still suggests retailers to be under Turnover Tax Regime @ 0.75% of turnover. This poses a question as to whether and how retailers dealing in finished form of garments, leather, etc. are to be taxed @ 5% of value of supply or 0.75% of quarterly turnover.

The Institute suggests such an anomaly should be addressed and removed for better compliance of SRO 1125.

3.2.28. APPEAL EFFECTS

It is suggested that a new section may be introduced to the effect that any issue decided by the Commissioner (Appeals), Appellate Tribunal Inland Revenue, High Court or the Supreme Court will be given effect in the returns / orders for the subsequent period. If that order or decision is reversed by a superior forum then such assessment / returns shall be revised to that effect. This section should in principle be in line with section 124A of the Income Tax Ordinance 2001. It may be noted that absence of similar provision leads to unwarranted litigation.

3.2.29. SALES TAX AT THE RETAIL PRICE - THIRD SCHEDULE

On items included in 3rd Schedule of the Act, sales tax is recovered from the manufacturer at the retail price which is against the concept of VAT. In 1996, amendments had been made to reduce number of items to three. In the recent past a regressive approach has been adopted for the same that needs to be changed and items from the Third Schedule may be gradually deleted.

3.2.30. 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 following exemption available under clause 52A of Sixth Schedule to the Act.

The Institute, therefore, recommends that identical mechanism may be put in place for grant of zero rating under the Act.

3.2.31. ACTIVE TAXPAYERS LIST- SALES TAX GENERAL ORDER 34/2010

Sales Tax General Order 34/2010 (STGO) has been issued in terms of section 55 of the Act and introduces a wider definition of 'non active taxpayers'. Besides, various serious repercussions have been listed therein when either such non active taxpayers carry out businesses or when business transactions are made with them.

We understand the STGO suffers from fundamental legal infirmity since, on one hand, the Act does not contain any specific definition or criteria whereby a taxpayer may be classified as 'non active', on the other hand, the STGO does not only lists down a self-contradictory definition of 'non active taxpayers' but also specifies the repercussions if business is conducted by / with such taxpayers.

Stipulations of STGO	Issues
Every person who fails to file the return under section 26 of the Act within the prescribed period for two consecutive months has been classified as a Non Active Taxpayer.	Usually FBR Web Portal suffers from system problems near the filing date which delays timely filing by the taxpayer. Nonetheless, the STGO does not have provision to condone the where the delay in filing is beyond the control of businesses. Secondly, this requirement is in direct conflict with Rule 11(4) of Sales Tax Rules 2006 (the rules) whereby non filing of tax returns for consecutive 6 months may lead to deregistration of concerned taxpayer. A person who fails to file any missing return within 15 days of notice issued to him can also be classified as non active. However, it has not been specified whether this reference is made towards missing return in the departmental data base or otherwise.
Anyone who fails to file any due Income Tax return under section 114 or who fails to file the monthly withholding tax statement under section 165 of the income Tax Ordinance 2001 for two consecutive quarters will also stand disqualified as Non Active Taxpayer.	The term 'non active' has also not been defined in the Ordinance. Also, in the absence of any inter-tax / contra penal action prescribed in both Act and the Ordinance, the proposed action under STGO lacks due legal backing. In two identical judgments pronounced by the Appellate Tribunal Inland Revenue, it was held that the department is not authorized to use the data or information and figures, supplied by the businessmen in their Income Tax Returns, as basis for assessment of sales tax liability.

Stipulations of STGO	Issues
Whosoever fails to respond to the "discrepancy notice" or any other notice issued by tax authorities within 15 days of the issuance of such notice will also be treated as non active. The term" discrepancy" has been defined in STGO to mean "mismatching of invoice summary statements between registered buyers and sellers, mismatching of import goods declaration in the sales tax return by the registered person vis.a.vis data furnished by the Customs or any other discrepancy intimated by the tax administration to the taxpayer".	The condition of filing invoice summary statements in no longer prescribed in the statute since it was done away with 2 years back. Moreover, the clause regarding mismatching of invoices in taxpayers' tax return is also legally defective since such mismatching is duly protected under section 7(1) of the Act which empowers the buyer to claim his input tax credit in any of the 6 succeeding tax periods to which the purchase relates.
Mismatching of Goods Declaration between taxpayer's records and that furnished by customs may result in penal action against the taxpayer.	Such mismatching could also be when a particular import was not recorded / uploaded by Customs' in its own database.
The discrepancy, sent to taxpayer's email address or placed in his e-folder at e.fbr portal, will need to be removed by taxpayer getting himself 'audited' by tax authorities or explaining his position.	Under Section 56, a notice shall only be treated as having served to the taxpayer if it is personally delivered to him or his representative, sent by registered post or courier or served as prescribed under Code of Civil Procedure 1908. Even otherwise, the service of notices through email is also likely to incite other questions such as proof of service to the taxpayer, date of email, etc.
In clause 2(vi) of STGO, the taxpayer is required to furnish reply against discrepancy notice within 15 days of issuance.	Interestingly, on other hand, clause 3(ii) requires him to furnish his reply within 15 days of the receipt of discrepancy notice. Thus, STGO appears to be carrying serious self contradiction.
The taxpayer may be declared as 'non active' without service of any formal show cause notice and associated appealable order being served upon him.	The absence of such a mandatory procedure is against all norms of natural justice and fair play and negates the fundamental principle of equity which is the basis of every taxation system.
The buyer procuring goods from Non Active Taxpayer would be deprived of related input tax credit in case he purchases goods from a non active supplier. In such a case, the FBR's web portal would blink such message whenever he tries to feed his purchases over his tax return.	No mention of the law under which the department seeks to disallow the sales tax credit of a person if he fails to file his income tax return.

Stipulations of STGO	Issues
Taxpayers have been advised not to have any transaction with non-active taxpayers unless they are restored on active taxpayers list on the recommendation of their respective tax office or appellate forum. The 'advice' has also placed upon another restriction of settlement of transaction with non active taxpayers through banking channels even if the value of goods is below the limit of Rs.500,000 prescribed in section 73 of the Act.	The STGO has crossed the ambit of statute which categorically prescribes settlement of business transactions through banking channel only when the value of supply exceeds Rs. 50,000.

The Institute recommends that the foregoing issues may be addressed and modified version of STGO may be brought in the law by way of separate notification instead of an STGO.

3.2.32. 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 IRS.

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 person e.g. Chartered Accountant.

3.2.33. 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.

Therefore, to keep harmony and in the spirit of natural justice, Rule 71 may be amended to provide commencement of recovery proceedings after 30 days from the receipt of order.

3.2.34. PAYMENT OF ARREARS THROUGH INSTALMENTS

There is no provision available in the Act for payment of arrears in instalment. Further, legally speaking, no officer is authorised to approve any tax instalment plan.

ICAP suggests that necessary legislation may be made to allow the taxpayer to make payment of arrears in instalments.

3.3. FEDERAL EXCISE ACT & RULES

3.3.1. ADJUSTMENT OF DUTY - SECTION 6

Under Section 6 of Federal Excise Act 2005 (the FED Act), Federal Excise Duty is adjustable only if the registered person holds a valid proof to the effect that he has paid the price of goods purchased by him including FED and received the price of goods sold by him including FED through banking channels. The condition of payment and receipt is creating lot of problems for the taxpayers.

It is, therefore, suggested that FED should be made adjustable on accrual / paid basis as per section 7 of Sales Tax Act 1990. Further the duty adjustment should not be made subject to receipt of sale proceeds and related duty.

3.3.2. DEBIT / CREDIT NOTE - RULE 14A

Identical to section 9 of the Act, Rule 14A of FED Act also allows adjustment(s) in tax invoice or return for dutiable goods. However, the benefit of such Rule has not been extended to dutiable services.

It is suggested that necessary amendments may be made in Rule 14A to include reference of dutiable goods and dutiable services.

3.3.3. MANDATORY PAYMENT BEFORE FILING APPEAL - SECTION 37

Before preferring appeal before Office of Commissioner (Appeals) or Appellate Tribunal, a taxpayer is required to deposit the impugned duty demanded or penalty imposed in the appealable order. This mandatory compulsion is considered as a hindrance in the dispensation of justice.

The identical provisions in Income Tax and Sales Tax have already been repealed. Therefore, it is suggested that the same should also be removed from the excise law.

3.3.4. EXCISE DUTY ON ROYALTY

'Royalty' payments have been subject to FED. The term used in the law is 'Franchise fee' which at times distinguishable with royalties in strict commercial and practical sense. This has led to serious issues of interpretation and misapplication in many entities. Taxpayers are more seriously affected for the reason that in such cases on account of use of technology etc. and their nature of operation, such entities engaged in various activities, necessarily require such payments.

It is recommended that FED procedures for franchise fee be streamlined and the same be brought in line with the State Bank's regulation. Such measures will resolve the issue correctly as most of the organized entities remit such fees through SBP and there are well laid down procedures for the same.

3.3.5. FRANCHISE SERVICES

In terms of Section 3 of FED Act, where the franchiser is a foreigner, the liability to pay FED on franchise services falls upon local franchisee through reverse charge basis. Such FED operates under a Non-VAT mechanism meaning whereby the local franchisee who pays FED from his own pocket is not entitled to claim the same against his excise or sales tax liability. This creates a huge drain of funds from the franchisee's pocket and is causing undesired distress among the taxpayers.

ICAP proposes that all excisable services including franchise or royalty may be brought under the VAT mode and taxpayers may be allowed to claim the same from their output tax / duty.

3.4. SINDH SALES TAX ON SERVICES ACT 2011 & RULES

3.4.1. SERVICE VS. SERVICE PROVIDER

In terms of 18th Amendment in the Constitution, all Provinces including Sindh has a right to impose and collect Sales Tax on Services. In its wisdom, the Sindh Assembly enacted the Sindh Sales Tax on Services Act 2011 (SSTSA) which was implemented w.e.f. 01 July 2011 across the Province of Sindh.

SSTSA carries 1st Schedule which lists down all services out of which the services specifically taxed under SSTSA are listed in 2nd Schedule thereof. For the purpose of taxing services, the legislature adopted Chapter 98 of Pakistan Customs Tariff which was originally coined and tabulated by Federal Government.

A perusal of services listed under Chapter 98 which later on taxed under 2nd Schedule of SSTSA transpires that apart from taxing services, the legislature has gone a step ahead by taxing certain *services providers* as well. For instance, besides various services, sales tax has also been imposed on the following service providers:

- Services rendered by Hotels
- Services rendered by clubs
- Services rendered by Accountants & Auditors

The Institute understands that taxing a particular service provider than that of a particular service has far reaching impact on the business. If a service provider is taxed, it could also be construed that all his services (including those not specifically taxed or otherwise exempt) may also be liable to Provincial Sales Tax. Such a proposition may need to be taken into account and clarified well in advance.

Hence, it is suggested that a detailed study into legislative history including but not limited to constitutional position may be carried out by Sindh Government and Sindh Revenue Board to ascertain whether Provinces are also empowered to impose sales tax on service providers.

3.4.2. CONTRACTUAL EXECUTION OF WORK OR FURNISHING SUPPLIES – TARIFF HEADING 9809.0000

Under the tariff heading - 9809.0000 of the Second Schedule to the Act, services provided or rendered by persons engaged in contractual execution of work or furnishing supplies are required to charge sales tax @ 16%. However, SRB's Notification No. SRB-3-4/7/2013 dated 18 June 2013 exempts such contracts from sales tax where the total value of such work or supplies does not exceed Rs. 50 million in a financial year subject to the condition the value of service component of such contractual execution of work or furnishing supplies also does not exceed Rs. 10 million rupees.

The following practical problems have arisen which need immediate redressal in the upcoming Budget:

(i) Wider Ambit

The Institute understands that the above classification is too wide, vague and unwarranted as it virtually covers or touches every facet of business or service.

Every business / service is primarily a contract between the parties. In the wake of foregoing Tariff Heading, the entire 1st & 2nd Schedule of SSTSA becomes redundant. Besides, the above is construed to be a hanging sword on service providers / service recipients especially in the backdrop of Sindh Revenue Board's (SRB) interpretation that where any service is not listed in1st or 2nd Schedule of SSTSA, the same may be treated as taxable under Tariff Heading 9809.0000.

The Institute, therefore, recommends that the above Tariff Heading should be abolished from the statute to avoid confusion, harassment and potential resultant litigation on this account.

(ii) Taxability of services embedded in composite contracts

The objective of this heading appears to bring into tax ambit, those services which are effectively 'embedded' in other contracts which are primarily not the contracts for taxable services. These contracts are 'contractual execution of work' or 'furnishing of supplies' which may be termed as 'composite contracts' which includes both supplies and services. The services are rendered as part and parcel of those contracts.

We understand that, services forming part of a composite contract would be taxable only if the same fall under the 'taxable services' listed in the Second Schedule to the Act. The intent of legislature was to bring only those services under the sales tax ambit as are specifically stated in the Second Schedule to the Act. The services which are not taxable under the Act, cannot be brought in to tax net under heading No. 9809.0000, otherwise all other entries would become practically irrelevant.

(iii) Basis of determining the threshold of Rs. 50 million

(a) It is unclear whether the threshold of Rs. 50 million will be determined on the basis of aggregate value of total contracts entered by contractor or threshold value will be determined on the basis of value of contract entered into with contractee. For instance, a contractor has executed first contract with Person A for Rs. 30 million and second with Person B for Rs. 30 million. The contractor's aggregate revenue is more than Rs. 50 million (i.e. Rs. 60 million). The question arises whether sales tax would be chargeable on both the contracts (due to the fact that aggregate revenue is more than Rs. 50 million) or not chargeable on both the contracts (due to the fact that the value of contract with a contractee is below Rs. 50 million).

The Institute feels that value of each contract with contractee (and not all contracts of contractor) should be considered for the levy of sales tax owing to the fact that, it is practically not possible to determine the charge of sales tax on the earlier contracts until the aggregate value of all contracts reaches the threshold of Rs. 50 million. Withholding Tax issues would also arise for the payer (contractee) as he may not be aware of the value of other contracts of the contractor.

(b) The second question is whether the exemption threshold would apply separately for each contract or the value of two or more contracts will be considered together (being executed with the same contractee). For instance, there are 'two' separate / distinct / bonafide contracts (A and B) signed with the same person (contractee) having value of Rs. 30 million each.

The Institute understands that value of each contract would be considered separately as there is a possibility that contract B is entered or executed after contract A and until contract B is entered, consideration for contract A is already paid by the contractee, without any charge or withholding of sales tax.

(c) Clarify is also required whether exemption threshold is to be tested with respect to a financial year (FY). For instance, 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.

(d) Fourth question relates to determination of value of service component in the contract value e.g. total contract is of Rs. 90 million which includes service component of Rs. 30 million, comprising taxable service component of Rs. 12 million, and non-taxable service component of Rs. 18 million. In another situation, service component of Rs. 30 million, comprises taxable service component of Rs. 9 million, and non-taxable service component of Rs. 21 million.

It appears, in the first situation, sales tax is chargeable on Rs. 12 million, as sales tax cannot be charged on non-taxable service component merely for the reason that it is part of a contract. In second scenario, taxable service of Rs. 9 million would not be taxable as threshold limit of Rs. 10 million, refers to 'taxable services'.

(iv) The tax treatment of standalone service below Rs. 10 service also requires clarity and elaboration under the said SRB's Notification.

3.4.3. CONSTRUCTION CONTRACTS

Under the Second Schedule to the Act, services provided by a Contractor under the construction contract may be classified under the following PCT Headings which are reproduced below for your ready reference.

PCT HEADING	DESCRIPTION	RATE OF SALES TAX
9814.2000	Contractor of building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air conditioning) multidisciplinary works (including turn-key projects) and **similar other works**	16%
9824.0000	Construction services	16%

The purpose of the above entry appears to bring all civil, electrical and mechanical works which are ancillary to the completion of the construction projects (undertaken by way of a contract) into the sales tax net. A contractor engaged for the construction of building ordinarily also responsible for other allied works stated above under a single contract. The Institute submits the following scenarios for further clarification from SRB:

(a) If a contractor is engaged in a single contract for the construction of building which also includes other works i.e. civil, electrical and mechanical works, such contract will fall under the heading 9824.0000 (construction services). Such contractor may opt for charging sales tax at the reduced rate of 4% under notification No. 3-4/8/2013 dated July 1, 2013 for the whole of the contract.

(b) If the above contractor hires services of other contractors (sub contractors) for the performance of civil, electrical and mechanical works during construction phase, such sub contractors will charge sales tax on the aforesaid works under the heading 9814.2000, or as entry 9824.0000, in our view, deals with construction work.

(c) The performance of civil, electrical and mechanical works on an already constructed building/existing building will also be subjected to sales tax under the heading 9814.2000.

(d) In the heading 9814-2000 above, the terms 'multidisciplinary works' and 'similar other works' needs to be further defined to avoid unnecessary litigation. It is recommended that SRB should either specify types of services which will fall under those terms or remove them from the heading.

3.4.4. BUSINESS SUPPORT SERVICES

The term 'Business Support Services' (reproduced below), falling under the heading 9805.9200, is very widely defined and almost every service provided in relation to business or commerce has been included in the definition. If all services are taxable under the definition of *'Business Support Services'* (BSS), then the Second Schedule listing down the taxable services becomes redundant.

Business Support Services:

"Services provided in relation to business or commerce and includes evaluation of prospective buyers, telemarketing, call centre facilities, accounting and processing of transactions, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation

"For the purposes of this clause, the expression "infrastructural support services" includes providing office alongwith utilities, lounge, reception with personnel to handle messages, secretarial services, telecommunication facilities, pantry and security";

The Explanation that only those services will fall under BSS which are ordinarily undertaken by businesses on their own, but for any reason, such support services are acquired from outside, should be inserted in order to avoid any issues.

Secondly, services provided by call centres are included in the First Schedule to the Act under the tariff heading 9824.0000. These services are not mentioned in the Second Schedule to SSTSA, and therefore, are not taxable services. The intention of legislature appeared not to tax the call centre services, however, these services have been made taxable by including the same in the above definition of 'Business Support Services', thereby creating contradictory situation.

Every trade, business, industry, profession or vocation is supposed to perform certain activities through their own resources which are ancillary to their main business process. For instance, procurement of materials, processing, marketing and distribution in an ordinary manufacturing business are the activities, a manufacturing concern is expected to undertake on its own by utilizing its own resources. If such enterprise acquires any of these services through a third party then such services could be treated as BSS. Conversely, services like transportation, printing, advertisement of product manufactured, etc. is generally and practically not the function of that manufacturing concern, therefore rendering of such services will not be treated as BSS.

In view of the above, the Institute recommends that SRB may issue a clarification that only those services will fall under Business Support Services' which are ordinarily undertaken by businesses on their own by utilizing their own resources, but for any reason, such support services are acquired from outside. Further, an appropriate amendment in the definition of 'business support services' is also suggested to make the definition more specific, mention only specific services which are taxable under the heading 'Business Support Services' and exclude services provided by call centres as these services have a separate tariff heading and have intentionally not been brought in the Second Schedule to SSTSA.

3.4.5. ADVERTISEMENT ON CINEMA SCREENS

Taxability of advertisement services have been dealt with under Tariff Headings 9802.1000 to 9802.9000 of the First and Second Schedules to the Act which are reproduced as under:

	FIRST SCHEDULE	**SECOND SCHEDULE**
Tariff Heading	**Description**	**Description**
98.02	**Advertisement**	**Advertisement**
9802.1000	Advertisement on TV	Advertisement on TV
9802.2000	Advertisement on radio	Advertisement on radio
9802.3000	Advertisement on closed circuit T.V.	Advertisement on closed circuit TV
9802.4000	Advertisement in newspapers and periodicals	Advertisement in newspapers and periodicals, excluding classified advertisements
9802.5000	Advertisement on cable TV network	Advertisement on cable TV network
9802.6000	Advertisement on poles	Advertising on poles
9802.7000	Advertisement on billboards	Advertising on Billboards
9802.9000	Others	Other Advertisement including those on web or internet.

A perusal of the above reveals that the First Schedule to the Act specifies certain advertisement mediums under separate PCT headings i.e. from 9802.1000 to 9802.5000 whereas all other advertisement mediums not covered under the above PCT headings are classified as 'Others' under a separate PCT heading 9802.9000.

Advertisement on cinema screens relayed during intervals of movies does not fall under advertisement mediums stated above under PCT headings 9802.1000 to 9802.5000.

It may be observed that the PCT heading 9802.9000 mentioned in the Second Schedule reads as **'Other Advertisements including those on web or internet".** The legislative intent while including that heading appears to levy sales tax on advertisement services which are provided through web / internet or possibly for advertisement through mobile phones (via sms) etc. Such medium is entirely different from advertisements on cinema screens and therefore cannot be equated with advertisement on cinema screens.

In view of the above, the Institute suggests that SRB may issue a clarification that advertisement on cinema screens relayed during intervals of movies is not chargeable to sales tax.

3.4.6. SERVICES FALLING UNDER THE HEAD 'OTHERS'

In the Second schedule of SSTSA, description of services falling under certain tariff headings has been stated as 'others'. These tariff headings are given below:

a)	**9812.1990**	**b)**	**9812.2900**
c)	9812.5090	d)	9812.6129
e)	9812.6190	f)	9812.6290
g)	9812.6390	h)	9812.9090
i)	9813.1600	j)	9813.4990
k)	9813.8100	l)	9831.0000

The term 'others' may have a wider meaning and there would always be an uncertainty which services are taxable under the heading 'others' leading to unnecessary litigation.

It is, therefore, suggested that all the foregoing Tariff Headings may be withdrawn.

3.4.7. DUPLICATE ENTRIES OF SERVICES

In the Second Schedule of SSTSA, following services have been specified twice under the following headings:.

Management Consultants	(9815.4000 and 9819.9300)
Property developers and promoters	(9807.0000 and 9814.3000)

In the First Schedule of SSTSA, description of service under the heading **9815.9000** is **'other consultants'** whereas in the Second Schedule, the description of service under the same heading is **'Tax Consultants'**. It is, therefore, suggested that the First Schedule be aligned with the Second Schedule.

Also, the following services have been listed in the First Schedule twice; once with a PCT heading and once without:

- Purchase or sale of moveable or immovable goods or property (9806.1000)
- Property dealers (9806.2000)
- Car/automobile dealers (9806.3000)
- Dealers of second hand goods other than automobiles (9806.9000)

Furthermore, certain services are listed in the First Schedule without PCT heading and their corresponding entry is not listed in the Second Schedule, which gives the impression that these services are not taxable. However, these services are also listed in the First and Second Schedule under another PCT heading.
In view of the foregoing, the Institute recommends that a clarification in respect of these services should be issued by SRB as duplication of entries might create confusion for the taxpayers. These services are listed below for your ready reference:

- Tax Consultants (9815.9000)
- Market research agency (9818.3000)
- Services provided or rendered for personal care by beauty parlors/clinics, slimming clinics or centres and others. (9810.0000)

Services provided or rendered for personal care by beauty parlors/clinics, slimming clinics and others are classified in the First Schedule under the Tariff heading 9810.0000, however the short form of this entry viz. “Beauty Parlour / Beauty Clinics” in also listed in the First Schedule without a Tariff heading (after Tariff heading 9824.0000)

It is suggested that the entry in the First Schedule “Beauty Parlour / Beauty Clinics”, without the Tariff heading be deleted.

3.4.8. INSURANCE SERVICES

The Institute proposes the following:

(a) At First and Second Schedule, Tariff Heading 9813.1000 should be modified as under:

“Service provided or rendered in respect of insurance to a policy holder by an insurer, including a reinsurer in case where direct insurance service has been provided”.

The words “in case where direct insurance service have been provided” exists in Clause 7 of Table II (Excisable Services) of First Schedule to the Federal Excise Act 2005. The above proposition aims to bring SSTSA in line with FED Act and to avoid double taxation.

(b) Reference of reinsurance should be removed from Tariff Heading 9813.1600 which should be reworded as “Other Insurance” to bring SSTSA in line with FED Act.

(c) In Rule 31(3) of Sindh Sales Tax on Services Rules 2011, Sales Tax in respect of an insurance policy is accounted for in the same month when the premium is received and deposited by the insurance company.

(d) As the applicable rate of sales tax in Section 5 of SSTSA is on the value when services are provided or rendered, therefore, it is suggested that it should on accrual basis for insurance sector as well irrespective of when the premium is received.

(e) Rules 23 of the Sales Tax on Services Rules 2011 allows adjustment of debit and credit notes only to the extent of 180 Days. The Institute recommends that Sindh Revenue Board should also allow adjustment up to 365 days in line with the adjustment period allowed by FBR for insurance sector.

3.4.9. WITHHOLDING TAX

Under the SSTSA and Rules, all payments made for services received from a unregistered person the company attracts 16% withholding tax.

Under the current economic scenario of our country where the cost of doing business is very high, such requirement is draining out liquidity of businesses.

Thus, it is suggested that the requirement for withholding sales tax on services provided by unregistered persons should be removed or brought in line with the provisions of Sales Tax Act 1990 whereby 1% tax needs be withheld on purchases from unregistered person.

3.5. PUNJAB SALES TAX ON SERVICES ACT 2012 & RULES

3.5.1. PRINCIPLE OF ORIGIN

All across the country, sales tax on services is levied and collected on the basis of “origin” i.e. from where the service originates in a Province. Accordingly, it is taxed in the same Province regardless of place of its consumption.

However, Section 4 of the Punjab Sales Tax of Services Act 2012 (PSTSA) is based on the “consumption” as well as origin principle i.e. it is taxed in the Province of Punjab at the time when any service is originated therefrom and if a service is consumed in Punjab, it will also be taxed in Punjab regardless of whether the service originated from outside Punjab.

Under the Constitution, the provinces can impose sales tax on services. The authority of the provincial governments is limited to the territory of their respective province. Taxing services on the basis of the “consumption” principle means taxing services, which are being provided by persons who are not in the territory of the province. Thus, the Institute recommends that Punjab Revenue Authority should adopt uniform principle for taxation and amend its conflicting legislation of Section 4 of PSTSA to bring it in line with the Federation.

3.5.2. WITHHOLDING TAX

Under the PSTSA and Rules, all payments made for services received from a unregistered person the company attracts 16% withholding tax.

Under the current economic scenario of our country where the cost of doing business is very high, such requirement is draining out liquidity of businesses.

Thus, it is suggested that the requirement for withholding sales tax on services provided by unregistered persons should be removed or brought in line with the provisions of Sales Tax Act 1990 whereby 1% tax needs be withheld on purchases from unregistered person.

3.6. KHYBER PAKHTUNKKHWA SALES TAX ON SERVICE ACT, 2013

KPK Sales Tax law is apparently built on the same structure as is applicable in other provinces so by and large, it suffers from the same problems, issues, snugs and irritation as are present in other Provinces.

3.6.1. SALES TAX RULES

There are numerous provisions which required procedures and mechanism such as payment of tax, registration, book keeping, invoicing or billing requirements, returns and other related matters. However, KPRA has not yet issued sales tax rules to tackle the situation.

3.6.2. DEFINITION

No service category has been defined in the Act which would give rise to disparity and maladministration / misapplication of powers by the officials.

3.6.3. DUAL TAXATION

All provincial sales tax legislations contain charging provisions which are overlapping in nature over each other. Further, the Federal Government has also levied federal excise duty on services which tantamount to threefold taxation and effect the services industry in negative way. This issue needs to be resolved.

3.6.4. TAX INVOICES

There are certain sectors which are not required to issue invoices such as banks. Further certain free of charge services are offered in the form of discount by the banks. Since they are not required to issue invoices they are not in a position to get any benefit out of offering services at reduced value.

The law should provide a mechanism for addressing this matter.

3.6.5. INPUT TAX ADJUSTMENT

Through Section 32(3) of the Act, it is restricted that no adjustment or deduction of any tax payable under any other law could be claimed by any person except in the manner and to the extent specified in the notification issued by the Authority.

However, it is noted that no such notification has yet been issued by the Authority which deprived the person from its due tax credit.

3.6.6. ADVERTISEMENT ON NEWSPAPERS, PERIODICALS AND MAGAZINES

The KPK Assembly has imposed sales tax on advertisement through newspapers, periodicals and Magazines which is contrary to sales tax laws promulgated by other provinces or authorities. Thus, the same should be exempted.

3.6.7. JOINT LIABILITY OF BUYER & SUPPLIER

In terms of Section 35 of the Act, a registered person purchasing goods is jointly and severally liable if the sales tax is not paid by the service provider. It is quite unjustified to punish a genuine service recipient for an offense committed by corresponding service provider.

NOTES

The Institute of Chartered Accountants of Pakistan

Head Office
Chartered Accountants Avenue,
Clifton, Karachi-75600.
Phone: (92-21) 99251636-39
UAN: 111-000-422
Fax: (92-21) 99251626
Email: info@icap.org.pk

Islamabad Office
G-10/4, Mauve Area,
Islamabad.
Phone: (92-51) 9266196, 9106092-93
UAN: 111-000-422
Fax: (92-51) 9106095
Email: islamabad@icap.org.pk

Multan Office
3rd Floor, Park Lane Tower,
Officers' Colony, Near Eid Gaah Chowk,
Khanewal Road, Multan.
Phone: (92-61) 6510511, 6510611
Fax: (92-61) 6510411
Email: multan@icap.org.pk

Lahore Office
155-156, West Wood Colony,
Thokar Niaz Baig, Riawind Road, Lahore.
Phone: (92-42) 37515910-12
UAN: 111-000-422
Fax: (92-42) 35963411
Email: lahore@icap.org.pk

Faisalabad Office
36-Z, Commercial Centre,
Madina Town,
Fiasalabad.
Phone: (92-41) 8531028
Fax: (92-41) 8503227
Email: faisalabad@icap.org.pk

Peshawar Office
House No. 30, Old Jamrud Road,
University Town,
Peshawar.
Phone: (92-21) 5851648
Fax: (92-21) 5851649
Email: peshawar@icap.org.pk