

FEDERAL BUDGET 2017-18

Indirect Taxes

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Overview

- Status Quo; No Structural or Fundamental Shift / Change
- Have we broadened the tax net – confusion persists
- The ‘ought to be’ approach in Indirect Taxes
- Methodology of Legislation - Consequential
- Withholding Tax
- Revival of rescinded SROs
- Stay against payment of 15% or 25% liability
- Our Collective Challenge (Threat)

Have we broadened the tax net ?

Extracts of Finance Minister's Speech @ Parliament on 27 May 2017:

- ✓ *FBR Revenues grew by a historic increase of 81% in the last 4 years with average annual growth of 20%.*
- ✓ *Tax to GDP ratio which was 10.1% in fiscal year 2012-13 is likely to increase to 13.2% this year;*
- ✓ *The FBR tax revenue is estimated to increase by 14%;*
- ✓ *As a result of higher rates of withholding tax for non-filers, 475,000 new taxpayers were enrolled in last three years.*
- ✓ *Tax credit @ 3% of tax liability to manufacturers who make 90% of their sales to Sales Tax registered persons is withdrawn as this tax credit has not achieved its desired objectives without any consequent benefit in the form of increase of sales tax registration.*

‘Out to be’ Approach

Size of problem: retailer and middlemen to be tapped

- ✓ 19 core consumer and other goods are listed in 3rd Schedule and taxed @ retail price instead of value of supply.
- ✓ Retailers are taxed under divergent tax regime; turnover tax, etc.
- ✓ Unregistered industrial / commercial consumers, small retailers, Steel melters, re-rollers and marble industry pay sales tax according to consumption of electricity
- ✓ Electronic goods, foam, auto parts, maintenance products, tyres, batteries, arms, paints, tiles, biscuits, chocolates, etc. are exposed to 2% extra tax and are exempted at supply stage – Model for Tax Planning & Avoidance

‘Out to be’ Approach

- Efforts should have been made to bring the aforesaid sectors / goods in the standard tax regime on piecemeal basis. Start from single item or single sector.
- Data of unregistered stream may be gathered from respective industries, electricity distribution companies, NADRA, etc.
- Trade bodies / associations need to be taken into confidence. Creditability and rapport will be key factors to succeed.
- The provincial tax authorities or market research agencies may help GOP identify and trace the missing links.
- Fixed Tax Scheme with immunity from audit and past liabilities - a starting point.
- Imposing / enhancing CD / RD on imported goods would only promote grey channel. Instead, local industry should be promoted and incentives offered for import substitution. This will also address the huge unemployment issue.

Further Tax

An EGO issue !

A legally defective FBR's ruling discarded by Lahore High Court

Section 4 has been amended to protect a meagre sum

Zero rating distorted by changing the basic philology of VAT. This is a dangerous and catastrophic policy. The amendment may again be challenged before the Court.

Further tax has been imposed on exports ? Besides, local supply specified in 5th schedule, supplies on foreign carriers, etc. may also attract further tax.

It is suggested that the proposed amendment may be withdrawn and tax rate of unregistered person may be enhanced under SRO 1125(I)/2011 to achieve the desired revenue target.

Tax on Retailers

After Lahore High Court struck down SRO 608 on point of jurisdiction; previous tax framework for Tier-1 retailers made part of statute.

Option of 17% sales tax OR 2% turnover (without input tax adjustment)

The law does not spell out registration of Tier-1 retailers. Therefore, reference of retailers falling under Tier-1 need to be made either in Section 2(28) or in Section 14 of the Act.

A legal question arises whether 2% turnover tax may be imposed on goods which are specifically exempt under Section 13 or 6th Schedule ?

The debar of input tax proposed in Section 2(9A) appears to be misplaced and ought to be removed from charging section and rather placed in Section 8 of the Act.

Import of Goods – Destination Principle

Scope of taxation on imports into Pakistan has been widened irrespective of the area / territory where such imports would be consumed.

Amendment aimed to nullify the impact of Peshawar High Court [PHC]'s decision which held that sales tax is not payable on imports of goods intended to be consumed in FATA or PATA.

PHC directed that Federal Government:

- ✓ must take appropriate steps to ensure that person carrying on business in FATA or PATA remains immune from sales tax.
- ✓ formulate a uniform policy for seeking securities in form of post-dated cheques from the person importing goods for its consumption in FATA or PATA. Such securities may be returned upon production of consumption certificate.

The proposed amendment is in direct conflict with the directions of PHC. Such legislation may trigger another round of litigation. All legislations aimed to counter / undo the Court's judgments should be avoided.

Withholding Tax

Sales Tax Withholding (STWH) has been abolished on transactions between registered persons. Now, only transactions executed with unregistered sectors will undergo STWH

Advertisement Services under Islamabad Capital Territory (Tax on Services) Ordinance, 2001 shall remain exposed to STWH. However, necessary legislation has not been made so far to protect such withholding under ICT Laws.

It's a positive and revenue neutral step; after launching of STRIVE system last year, the purpose of sales tax withholding rules had become redundant for transactions between registered persons.

The amendment will be applicable on invoices issued w.e.f. 01 July 2017.

It is suggested that withholding from unregistered persons may not be made a revenue tool; rather should be taken as a tool to broaden the tax net.

Tax deducted on transactions made with unregistered persons may be allowed as input tax in the hands of respective buyers in the same manner as it was in vogue under SRO 603/2009.

Revival of rescinded SROs

Section 13(7) was introduced in Year 2015 to auto rescind exemption notifications (if not rescinded earlier) issued after 1st July 2015 after expiry of the financial year in which such notifications were issued.

Through Finance Bill, a proviso has been added which provide a new lease of life to all notifications issued between 1st July 2015 upto 30 June 2016, which were auto rescinded on 30 June 2016. All such notifications shall now be valid till 30 June 2018, if not rescinded earlier.

The following issues would emanate out of the proposed amendment:

- ✓ Whether tax charged and paid in treasury after 30 June 2016 till todate shall be refundable to such persons ?
- ✓ Whether cases framed against taxpayers for illegal claim of exemption on said notifications after 30 June 2016 would be dropped ?

Stay against payment tax liability

Under sales tax & excise duty laws, the Commissioner IRS has been empowered to stop recovery notice if the appellant pays off 25% of the tax due after filing of appeal. Stay would be granted to appellant against recovery till the time of decision by Commissioner (Appeals).

Overlapping options in FED Act 2005:

- Pay 15% of assessed liability; no recovery till 6 months or till the decision of 1st appeal, whichever is earlier.
- Pay 25% of assessed liability: no recovery till decision of 1st appeal, whichever is earlier.

It appears to be drafting error. Perhaps the intent of the Bill was to substitute the existing scheme of 15% tax with the new scheme of 25% and also to bring in new timelines for pausing the recovery proceedings.

It is suggested that the original benefit, being a more lucrative one, should be kept intact and the proposed amendment regarding 25% tax payment may be withdrawn.

جرات ہونمو کی توفضا تنگ نہیں ہے
اے مردِ خدا، ملکِ خدا تنگ نہیں ہے
(اقبال)

The possibility of growth is not limited for those who dare. O' God's man, the kingdom of God is unbound.

**THANK
YOU**