

KTBA's KEY PROPOSALS FEDERAL BUDGET 2020-21 INDIRECT TAX LAWS

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CONTEXT & TAXONOMY



- This presentation summarizes the key proposals by KTBA to Federal & Provincial Govts. on Indirect Tax Laws for Budget-2021-22
- Considering time constraint, proposals common for all indirect tax laws have been preferred; proposal specific to a particular law expressly mentions the same
- Proposals have been categorized as under;
- Structural / Jurisdictional Issues
- Diminishing Cost / Ease of doing business/Relief Measures
- Broadening of Tax Base/ Revenue Measures
- Administrative Ease / Simplification of Procedures

STRUCTURAL & JURISDICTIONAL ISSUES



Friction Between FBR and Provincial Tax Authorities



Issue;

- Despite lapse over ten years, since promulgation of 18th Constitutional Amendment, disputes regarding jurisdiction and basis for levying the sales tax are still unresolved
- A lot of unnecessary litigation on such issues has piled up
- National Tax Council has been announced to resolve such issues, however, no tangible results till date

Proposal;

- .Governments should resolve jurisdictional disputes at earliest

Harmonization Tariff Headings and Basis for Taxation under the Provincial Sales Tax Laws



Issue;

- Presently, all the service sales tax laws contain their own list of taxable services, which are couched in such a way that there are many entries with overlapping scope which lead to interpretational issues
- Further all the provincial laws envisage origin as well as destination principle for levying tax on service- double taxation

Proposal;

- Govt. should co-ordinate to promulgate negative list approach & specify place of supply rules at earliest. WTO tariff heading for services may also be adopted

Separation of Tax Fraud Investigations/Audit from routine Audit/Assessment Function



Issue;

- Presently, jurisdiction for audit & adjudication of cases involving tax fraud as well as routine audit & assessments lies with the same officer
- The two proceedings require different type of skill set and approach
- Further same officer is responsible for conducting audit and adjudication- KTBA also filed petition in SHC seeking segregation of same which still pending
- Lack of segregation, results in inefficiency and undue harassment of law compliant taxpayer, as officers invariably include allegation of tax fraud in almost every show cause notice

Separation of Tax Fraud Investigations/Audit from routine Audit/Assessment Function



Proposal;

- Cases of Tax Fraud should be investigated and adjudicated by a Special Directorate to be set up for this purpose
- Concerned Officer exercising jurisdiction over a taxpayer, if has determined that taxpayer is involved in suspicious/criminal activity the case should be turned over to the Special Directorate.
- Function of conducting audit and assessment of tax/adjudication should also be separated
- Detailed framework / rules should be prescribed after consultation with all the stakeholders

Advance Ruling Authority for Sales Tax Issues



Issue;

- There is no provision enabling “advance ruling” under the Federal Sales Tax as well as Provincial Sales Tax Laws
- Due to absence of such option, taxpayers are exposed to uncertainty with respect to sales tax implication on their complex business deals
- Lack of clarity at the outset converts into expensive litigation at later stages

Advance Ruling Authority for Sales Tax Issues



Proposal;

- Concept of “Advance Ruling” should be introduced in each sales tax law in line with other tax laws and global best practices
- Detailed Rules may be framed in consultation with the stake holders to set up highly empowered “Advance Ruling Authority”
- It will also help in attracting foreign direct investment

Provincial Tax Ombudsman



Issue;

- Though the Sindh Sales Tax on Services Act, 2011 envisage the concept of appointment of “ombudsman”, however no such appointment has been made till date.

Proposal;

- To keep check on the exercise of powers by the officers of SRB, office of provincial Tax ombudsman should be established at earliest.

**Diminishing Cost/Ease of Doing
Business/ Relief measure**



Restriction on Claiming Input Tax in Excess of 90% of the Output-Section 8B of ST Act



Issue;

- Section 8B imposes restriction whereby input taxes in excess of 90% of the output taxes
- 10 % mandatory payment results in accumulation of legitimate input tax and unnecessary financial burden for registered persons
- No significant revenue contribution to exchequer due to this provision

Proposal;

- Section 8B should be deleted from the Act as it is against the very concept of VAT

Cost of doing business with Un-registered Persons-ST Act, 1990



Issue;

- Withholding rate for purchases from unregistered persons had been enhanced to 5% vide Finance Act, 2020.
- Further tax @3% is also charged on supplies to unregistered person
- Input disallowance for not providing CNIC of buyer/ supplies over certain threshold of certain limit
- Actions were intended to bring the undocumented sectors in tax net
- However, due to the large size of informal economy, impact on certain documented sectors is more adverse than unregistered person

Cost of doing business with Un-registered Persons- ST Act, 1990



Proposal

- Either the withholding rate be reduced to 1% or such tax withheld be allowed as admissible input tax to the registered person upon providing CNIC/ Incorporation ID of such unregistered supplier
- No further tax be recovered with respect to supplier where CNIC of buyer is provided by the supplier
- No input tax disallowance where CNIC of buyer is provided by the supplier
- Mechanism for automatic/compulsory registration of such persons who are liable to be registered on basis of CNIC be developed

Tax Credit not Allowed –with respect to Capital Assets/Production Facility



Issue;

- Certain input tax paid with respect key cost components of establishing production/business facility to carry on taxable activity is disallowed in Federal as well as provincial sales tax laws. e-g construction material, cost incurred on capital infrastructure in periods exceeding 6 month before commencing business (SST)
- This significantly increases the project cost, thus hampering industrialization, is also against global best practices of VAT

Proposal

- Relevant provisions be amended to allow for legitimate input tax

Export of Services- Zero rating



Issue;

- Presently, export of most of services is not zero rated except for the province of Punjab, which is against global practices of VAT
- Sales Tax on export of services renders the Pakistan based service providers as uncompetitive in international market

Proposal

- Export of any taxable services should be zero rated in line with global best practices

Time of Supply- Section 2(44) of ST Act, 1990



Issue;

- Definition of time of supply as amended through the Finance Act, 2013 stating receipt of advance as subject to sales tax, has created number of practical problems
- A tremendous exercise of reconciliation between the books of account where sales is recorded based on delivery of goods with the sales tax returns where sales tax is paid on advance receipts.

Proposal

- The Bar therefore proposes the withdrawal of the amendment made through the Finance Act, 2013

Inadmissible Input Tax- Payment Through Banking Channel



Issue;

- Law does not cater transactions where payments are made by some other person / guarantor on behalf of the buyer or where payables are offset in books against receivable from same party
- For Income Tax Purposes, FBR's Circular 01 of 2009 allows adjustments of payment through ledger accounts

Proposal

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

Broadening of Tax Base/ Revenue Measures



Adopting VAT Concept in True Spirit



Issue;

- It is well settled worldwide that basic utility of VAT concept based sales tax laws is that it documents the economy.
- Presently, in our sales tax laws there are so many deviations from the basic principles of VAT in shape of exemptions, reduced/fixed rate regimes, and unnecessary disallowance of input tax which provides opportunity to tax evaders to remain undocumented/ avoid tax

Proposal

- To reap the benefits of documentation and increase tax to GDP ratio, full fledged VAT concept be implemented

E –Commerce Through Digital Platforms



Issue;

- E-commerce of goods as well as services has gained significant momentum particularly in post covid era.
- Through digital platforms, large number of vendors/service providers from informal economy can reach customers without setting up proper business structure
- It is difficult not only for the tax authorities to capture such activity but also for the compliant taxpayers who want to discharge their obligations under the tax laws

E –Commerce Through Digital Platforms



Proposal

- Relevant provisions be amended, and detailed rules be framed for e-commerce in line with global best practices core features of which are;
- Digital platforms, due to their control on the transactions, should be held responsible for collection and payment of sales tax where the vendor is unregistered
- Small vendors earning revenue below 5 Million be exempted from getting registration under the Act
- Appropriate provision for exemption from withholding tax should also be introduced

Administrative Ease/Simplification of Procedures



Time Limit to Conclude Audit Proceedings



Issue;

- No time limit has been prescribed under any sales tax law to conclude Audit proceedings
- Audit proceedings are unnecessarily delayed for years and registered persons are required to submit records multiple times
- Inefficiency on part of department whereas increased compliance cost for the registered persons
- Apex Court of the country has concurred that one year is reasonable time to complete and audit proceedings

Time Limit to Conclude Audit Proceedings



Proposal;

- Time limit of one year may be prescribed for to conclude audit proceeding in line with the directions of Honorable Supreme Court of Pakistan

Simplifying Prescribed Form of Returns



Issue;

- Presently single return form is designed for all registered person irrespective of their size and nature of businesses which also contain complex annexures meant for targeted sectors only.
- Further, automated return form is directly uploaded on web-portal without seeking any input from stakeholders, usually contains errors which are gradually removed resulting in wrong declaration in certain periods due to technical issues
- For certain registered person having large number of entries, return filing is a hectic task due to technical limitations of the web-portal

Simplifying Prescribed Form of Returns



Proposal;

- Simple return form should be prescribed for small and medium size businesses.
- Sector specific statement should be notified separately requiring targeted sectors to file such statements along with return
- Draft return formulae should be shared with stakeholders for timely identification of issues



THANK YOU

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