



# OICCI TAXATION PROPOSALS 2016-2017



## **SINDH PROVINCIAL TAXES AND LEVIES**

**April, 2016**

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### INTRODUCTION

The Overseas Investors Chamber of Commerce and Industry (OICCI), is the collective voice of all major foreign investors in Pakistan. The 195 OICCI members annually contribute over one third of the revenue collections in the country by the Federal and Provincial revenue authorities.

A few facts, which are part of the OICCI profile, are given below for an appropriate appreciation of the role played by the Chamber in the country's economy:

- **Representing 195 Foreign Investors**
  - Shareholders from 35 countries
  - Representation in 14 business sectors
  - 57 listed on Pakistan Stock Exchange
  - 50 Members associates of the 2015 Global Fortune 500 companies
- **Major contributor to the Economy of Pakistan**
  - Approximately one-third of government taxes/levies collected from OICCI members
  - Despite low FDI inflow in recent years, OICCI members invested USD 1.4 billion in 2014
  - Members provide employment to around one million people and are engaged in significant CSR activities
- **Tax Environment**
  - OICCI members companies are law abiding tax payers and share the concerns of the government on the very low tax to GDP ratio
  - OICCI members are concerned that a significant portion of the economy is not documented and outside the tax net.
  - OICCI fully support recent SRB initiatives to document the economy and broaden the tax base.

The views of the Chamber and operating experience of its members in Pakistan is closely followed by many stakeholders, including various international business chambers, diplomatic missions based in Pakistan and visiting foreign business delegations who come to get firsthand information of the business environment and opportunities for foreign investors in the economic growth of Pakistan.

OICCI has consistently advocated, and supported, fair and transparent tax measures to ensure a level playing field for all income earners who should pay their due share of taxes and to introduce a fully tax compliant culture in Pakistan, where there are rewards for the compliant tax payer and enforceable penalties for tax evaders.

Nearly all business climate surveys and independent research on investments indicate that tax environment, including tax rates, are given the highest priority by prospective investors and are one of the most significant deciding factors in attracting FDI in Pakistan. Therefore, in order to promote longer term investment, all the revenue authorities should ensure that tax policies, including tax rates, are fair, transparent, consistent and predictable.

### MULTIPLE TAXES AND INCREASED COST OF DOING BUSINESS

OICCI members appreciate the fact that the 14% Sindh sales tax on services is the lowest sales tax rate amongst all the provinces and the FBR. However members continue to express concern that the cost of doing business in Sindh is higher than the other provinces, on account of certain levies, for e.g. SDMI, which are not applicable in other provinces.

Taxes levied in Sindh should be harmonized with taxes in other provinces of the country, to ensure that investors in Sindh do not lose on competitive edge. Secondly, the taxes should be levied rationally, e.g. marking fee and stamp duty, are charged without any concrete rationale and without considering its negative impact on business. The consolidation of taxes will also make compliance easy for taxpayer.

### ALL REVENUE COLLECTIONS UNDER ONE MINISTRY/BODY

#### 1. Integration of all Revenue Collections

Currently revenue collections of the Province of Sindh fall under the following Ministries/Bodies;

- Sindh Revenue Board (SRB)
- Ministry of Excise and Taxation and
- Sindh Board of Revenue (SBR)– responsible for taxes on all transactions related to immovable property, stamp duties and agriculture tax

OICCI strongly recommends that all revenue collections should be merged under one Ministry/Body. The provincial government can devise an in house mechanism to share the revenue of the above three bodies through intra-government fund transfer.

This would add considerably to the ease of doing business (EODB), a matter which should be a priority for all policy makers in the country since Pakistan has fallen from 75 in 2010 to 138 in 2016, in the World Bank – EODB survey.

### TAX BROADENING MEASURES

#### 2. Agricultural Income Tax

As per the constitution of Pakistan, right of taxing income lies with the federal government except income from agriculture which is taxable under the respective provincial laws. Agriculture related activities contribute approximately 20% of the overall national production. However, the collection of agricultural income tax is estimated to be even less than 1% of total collection of Federal and Provincial taxes.

The above disparities in tax levies between different incomes segments need to be addressed. It is recommended that the Sindh government and revenue authorities take all possible measures to increase revenue collection from the agriculture sector. The original rationale of keeping agriculture out of tax net to facilitate small agriculturists is not applicable, due to non-implementation of land reforms, and the benefit of the tax exemption is being availed, as per common perception, by big landowners earning huge incomes and unscrupulous elements by transfer of income and wealth to businesses fronting as agriculture sector.

Some of the key issues related to agriculture income are identified as follows:

- **Principle of Non-Discrimination:** In principle, income from all sources, including agriculture, if exceeding the minimum threshold applicable for other sources of income should be taxed without any discrimination.
- **Determination Basis:** A transparent, easily understandable and applicable manner of determining such income should be designed.
- **Flexible Income Based System:** At present, the Agricultural Income Tax has effectively become a land tax, based on land holding, that leads to the perception that there is no tax on agricultural activities.
- **Identification and Linkage with National Tax Number:** There is no identification of even the small number of agricultural income taxpayer as they are not on the national tax number (NTN) system

### Recommendation

In light of the above, following proposals are made:

1. **Income Based System:** At present, the tax is payable on 'land holding' or 'net income' whichever is higher. However, the manner of determination of net income is complicated and therefore in almost 100% of the cases tax is received on land holding basis. This discourages the taxation on net income basis. Therefore taxability of income on land holding should be abolished and taxes collected on 'net income basis';
2. **Adjustable withholding tax:** Advance tax should be introduced on sale of agricultural produce such as sugar cane, wheat, cotton and others. There are only around 10 to 15 agencies and enterprises which acquire such crops. The advance tax should be adjustable against income tax payable on net income basis. Rates of withholding and the threshold for the same should be aligned with other products – for example any payment exceeding Rs 25,000 should be subject to advance tax at the rate of 1 to 3 percent as the case may be. Federal taxation system may be used for such collection on behalf of the provincial government in the same manner as is being done in other cases by the provincial government.
3. **Link and Interface with the National Tax Number:** All persons holding land should be required to obtain a National Tax Number (NTN), like the one maintained by FBR, and may be modified by adding one or two digits so as to identify that source of income is agriculture. [PRAL facilities may be used for such purposes in coordination with NADRA].
4. **Definition of Agricultural Activity:** Definition of agricultural income should be amended to include all agricultural activities like non-corporate dairy farming and poultry etc.
5. **Rent for the Use of Agricultural Land:** Under the specific provision, the rent for use of agricultural land, which is general practice especially for large landowners, is an agriculture income. There is effectively no mechanism to ensure completeness of recovery of taxes from such receipts. Such rent income should be subject to same rate of tax as is currently in vogue on property income under the FBR system.

## SALES TAX ON SERVICES

### 3. Coordination Between Federal/Inter-Provincial Sales Tax Authorities

After the promulgation of provincial legislations the taxability of services continues to be a dilemma. Both the Federal and Provincial revenue collectors (FBR, SRB, PRA, KPRA and BRA) have been pursuing the taxpayers with regard to deposit of tax/ duty within their respective jurisdiction, as per the provincial/federal laws, creating undue hardship and double taxation claims for taxpayers.

Currently both the provincial legislations levy sales tax on services on the points of 'origination' and 'termination' of service.

#### Recommendation

**A policy board comprising of the Chairmen of the Federal and Provincial revenue authorities should be formed to ensure synchronization of the policies, standard tax rates, basis of apportionment of revenues and removal of all anomalies/ conflicts between the laws of the different revenue boards (for example issues of jurisdiction, sales tax on toll manufacturing, WWF).**

The following possible alternatives may be looked into:

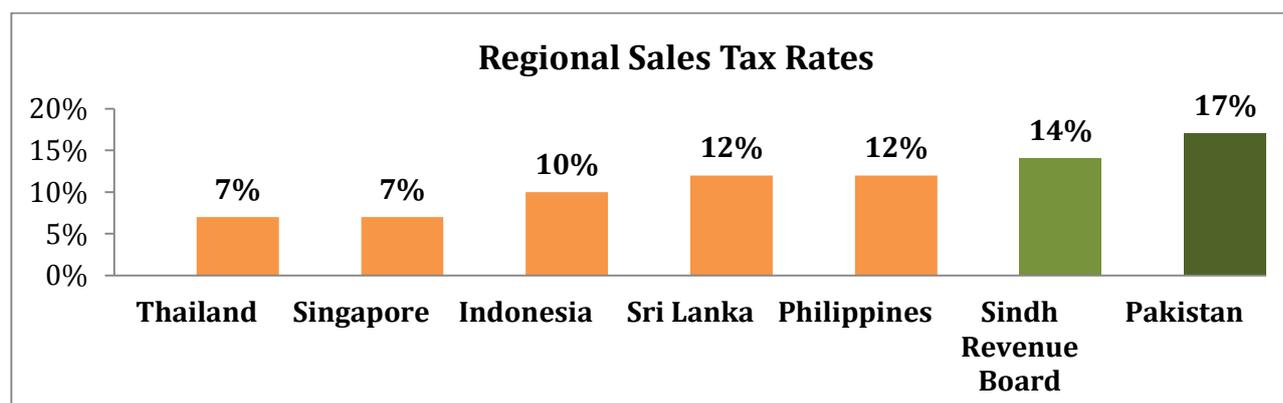
- **Taxability of service needs to be linked either with origination of service or termination thereof. Both the basis should not be simultaneously applied;**  
OR
- **Provincial revenue authorities, e.g., SRB, KPK, BRA and PRA, along with FBR should devise a mechanism for uniform taxation of services involving all the Provinces without engaging the taxpayers in any unnecessary legal controversy.**

#### Rationale or Benefit

Duplicate taxation is causing hardships to taxpayers and has given rise to unnecessary litigations.

### 4. Reduction In Sales Tax Rate

OICCI commends the Sindh Revenue Board for reducing the general sales tax on services from 15% to 14% with effect from fiscal year 2015-16, which has given a positive message to investors based in Sindh. Despite the reduction, the sales tax rate remains higher than comparative regional tax rates, as per the rates given in the graph below:



### Recommendation

The reduction in sales tax on services by 1% in the 2015-16 Sindh Finance Act should be continued in the next coming budget and gradually reduced to 10% over the next three years for registered entities, whilst the current rate should be maintained for unregistered entities. This reduced rate will encourage the registration of the unregistered taxpayers to avail the benefits of input adjustment.

Secondly, the option to opt for the basic rate or normal regime should be given to all the service provider who fall under the reduced/fixed rate regime.

### Rationale or Benefit

This option will reduce the cost of doing business for recipient of services as lower tax is not available for input tax adjustment.

### 5. Reduction In Sales Tax On Telecom Services

The high growth rates of cellular Industry in Pakistan have slowed down due to various reasons which include higher taxation. Pakistan cellular industry is one of the highest taxed in the region. This relative decline in growth has resulted in decrease in revenue from cellular industry.

### Recommendation

Currently, sales tax rate on telecommunication services is 18%. It is proposed that this should be brought at par with other services - sales tax on telecom services be equivalent to general Sales Tax rate on services, in order to harmonize all sales tax on services rates. This will increase the tax collections by helping telecom operators tap lower income population of Pakistan.

### 6. Exemption/Reduction of Withholding Agents from deducting Sales Tax from payments to unregistered persons

Section 9 of the Sindh Sales Tax on Services Act, 2011 (Sindh Act), provides that where a taxable service is provided by a non-resident unregistered person in the context of Section 3(2) of the Sindh Act, the liability to pay the tax shall be on the resident person receiving the service. On the other hand, the provisions of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011, provide that a withholding agent is required to deduct sales tax at applicable rate against any taxable services obtained from unregistered persons at gross value of the services. Both provisions of law are not consistent with each other, and scope of deduction of withholding sales tax against the invoices of unregistered service providers has been enlarged beyond the charging provision of Section 9(2) of Sindh Act to the extent that it applies on resident as well as non-resident unregistered service providers.

### Recommendation

Withholding agents registered with large taxpayers unit should be exempted from deduction of Sales Tax at applicable rate against the payments to the unregistered persons.

Alternatively, the rate of withholding sales tax against the invoices of unregistered persons should be reduced to 1% in line with the FBR's Withholding Sales Tax regime as applicable under SRO.660(I)/2007.

### Rationale or Benefit

The withholding agents are unnecessarily burdened with deduction of sales tax which is not claimable as input tax and is thus resulting in increasing their cost of doing business. Similar matters have already been decided by the courts in case of sales tax withholding rules of FBR and PRA. The ultimate objective of the taxpayer is that indirect tax should not increase its cost of doing business. Moreover these enforcement measures have negative bearing on the regulated sector only.

### 7. Admissibility of Input Sales Tax

As per section 18 Sindh Sales Tax on Services Act, 2011 read with rule 22A of the Sindh Sales Tax on Services Rules, 2011, the input tax may not be claimed by a registered person on the goods in respect of which sales tax has not been deposited in the Government treasury by the respective supplier. It is an unreasonable expectation by tax authorities from the buyer to ensure the deposit of the sales tax into Government Treasury by the seller, as the buyer does not have any enforcement power over the seller.

### Recommendation

**Section 18 should be suitably amended to exclude the taxpayers falling under Large Tax Payers Unit who are already subject to greater scrutiny and tax audits.**

### Rationale or Benefit

This will remove the undue pressure on legitimate taxpayers, as it is not the responsibility, neither the jurisdiction of the service recipient to ensure that the supplier has deposited output tax. Furthermore, legitimate taxpayers will not face harassment from tax authorities.

### 8. Admissibility of Input Sales Tax on Goods

[Rule 22A of Sindh Sales Tax on Services Rules, 2011]

The Government of Sindh vide Notification No. SRB-3-4/1/2015 restricted the admissibility of claim of input tax to 17%. Due to this amendment taxpayer will not be able to claim input tax on the petroleum products because Federal Government imposed higher rates on such products. Such kind of restriction will create hardship for the tax payer and will increase cost of business.

### Recommendation

**The Rules should be amended and claim of input tax should be allowed at the actual amount of sales tax paid by the registered buyers in order to save them from any extra cost burden.**

### Rationale or Benefit

This will remove the undue pressure on cost of legitimate taxpayers, as it is the basic right of the tax payer to claim sales tax on such goods as input tax. Further removing such kind of restriction will save both authorities and tax payer from unnecessary litigation.

### 9. Use of technical knowhow/ information for manufacturing be eliminated from the definition of “Franchise services”

The definition of “Franchise Services” is very broad and generic that covers technology transfers being made through use of technical knowhow/ information for manufacturing in Pakistan, which generates employment, saves foreign cash outflows for imports and contributes to society.

#### Recommendation

**Use of product knowledge, technical know-how/ information for manufacturing should not be included in the definition of “Franchise Services”.**

#### Rationale or Benefit

Taxpayers suffering from increase in cost of doing business even on account of technology transfers will get some relief and provide an incentive to foreign investors.

### 10. Threshold for exemptions

Threshold for exemptions described under Notification issued by SRB vide S.R.B.-3-4/3/2011 is not clear from the point of view of the withholding agent.

#### Recommendation

**It needs to be clarified whether the threshold of Rs.50 million is applicable on the service providers engaged in contractual execution of work on the basis of the contract entered into with the withholding agent or this threshold is determined on the basis of total revenue of the contractor during the financial year involving various contracts.**

#### Rationale or Benefit

Interpretational issues should not arise while determination of taxability as well as withholding tax by the service recipient.

### 11. Claim of Input Tax

The input tax can only be claimed if the same is paid rather than following the accrual method of accounting. Further, the input tax has to be claimed within next four months from the relevant tax period. This restriction will give rise to filing of refund which resultantly brings administrative hassle to taxpayer and tax collector.

#### Recommendation

**It is recommended that claim/adjustment period of input tax should be increased to six months and adjustment should be allowed on payable basis rather than paid basis i.e. in line with the mechanism adopted by FBR.**

### 12. Sales Tax on Services for Pharmaceutical Inputs

All pharmaceutical products are exempt from Sales Tax. Consequently any sales tax paid by pharmaceutical industry on goods or services purchased, can neither be passed on to the consumer nor can be claimed as input, and has to be absorbed by the manufacturers in their costs. It is resulting in increasing the cost of doing business, amidst already spiraling inflation, and frozen prices of finished products.

This is also against the philosophy of sales tax which is supposed to be borne by the consumer.

### Recommendation

**Services received by pharmaceutical industry should be zero rated.**

### 13. Introduction of Zero-Rating

As per the Fifth Schedule to the Sales Tax Act 1990, exports made by a registered person are zero-rated. Presently, there is no concept of zero-rating in Provincial Sales Tax Acts. Resultantly, the companies providing services to foreign companies and bringing foreign exchange in Pakistan need to pay sales tax from their own account.

### Recommendation

**We recommend that the above mentioned services should be classified as zero rated by inserting a separate schedule in Provincial Sales Taxes Act for zero rating and exempt services.**

### Rationale or Benefit

This will result in harmonization of tax laws in Pakistan and would ensure convenient compliance with tax laws through uniform systems across the country and would also contribute towards the economic development of the Country.

### 14. Common Sales Tax Return Filing Portal

Requirement specification for FBR, SRB, KPK, BRA & PRA should be same for filing of monthly sales tax return rather than submitting same return at different portals, one portal accessible to all tax authorities should be there.

### Recommendation

**This would save operational cost of taxpayer as well better visibility for Federal and provincial tax authorities.**

### 15. Provincial Sales Tax on 'toll manufacturing'

Sindh and Punjab provincial governments are treating toll manufacturing activity as a 'service' and have levied sales tax at the rate of 16 percent effective July 1, 2013. Notwithstanding the fact that toll manufacturing is not a 'service' and therefore outside the constitutional scope of Provinces to charge PST, such a levy has directly increased cost of doing business, especially for pharmaceuticals which are exempt from Federal Sales Tax. It may be noted that toll manufacturing activity, since inception of sales tax regime, has always been treated as 'a manufacturing activity'. Since pharmaceutical and some other supplies are exempt from sales tax under the FST Act, no Federal Sales Tax was leviable under the FST Act. The position is further aggravated owing to the fact that prices of pharmaceutical products are regulated by Drug Regulatory Authority of Pakistan; therefore effect of such levy has to be borne by pharmaceutical company itself.

### Recommendation

**"Toll manufacturing" should be deleted from the list of services.**

### Rationale or Benefit

It will bring practice in line with the norm besides reducing cost of doing business.

### 16. Taxation of data services @ 18%

Data services are exempt in Province of Punjab and Federal Capital Area while these are taxable @ 18% in province of Sindh.

### Recommendation

**Data services should be zero rated in Province of Sindh**

## OTHER LEVIES

### 17. Stamp Duty

The definition of the term 'instrument' as contained within the Stamp Act 1889, applicable for the province of Sindh, was amended in 2006 to broaden its scope. Subsequently through an amendment in the Sindh Finance Act of 2009, the term Purchase Order (PO) was included to the stamp schedule for purposes of levy of the stamp duty on POs generated at the rate of 0.25% of the amount of the PO. The progressive nature of the tax is increasing the cost of doing business and further raises the issue of double taxation, in the presence of income and sales tax as direct and indirect taxes respectively. The levy is currently enforced only in Sindh and therefore causes serious hardships for corporate sector registered or carrying out business in Sindh Province as against other provinces.

### Recommendation

**It is recommended that the Stamp Duty on PO @ 0.25% should be eliminated as it is a tax on 'instrument' and not on a transaction. If it is not a transaction tax on purchase then there can't be a dual charge under the constitution on same nature of transaction.**

**Furthermore, Stamp Duty is payable on enforceable instruments. PO in commercial sense is a document only acknowledging the transaction that will be undertaken and does not fall within the ambit of Stamp Act.**