

# TOWARDS FLAT, LOW-RATE, BROAD AND PREDICTABLE TAXES

BY  
HUZAIMA BUKHARI  
DR. IKRAMUL HAQ

PRIME is a public policy think tank working for an open, free and prosperous Pakistan by creating and expanding a constituency for protective function of the state and freedom of the market.

The study titled "**Towards Flat, Low-rate, Broad and Predictable Taxes**" by Huzaima Bukhari & Dr. Ikramul Haq analyses the structural and operational weaknesses of the existing tax system at federal level and suggests alternate solutions in the areas that require fundamental reforms. This study argues that taxpayers have to deal with multiple tax agencies adding to their cost of doing business and the non-existence of tax-related benefits is the most neglected area of our discourse on reforms. It highlights the existing four-tier tax appellate system, how it has failed to deliver and the alternate system which can be adopted.

**Published by:** Policy Research Institute of Market Economy (PRIME)

© PRIME Institute

**Recommended Citation:** Huzaima Bukhari & Dr. Ikramul Haq (2016), Towards Flat, Low-rate, Broad and Predictable Taxes, Islamabad: PRIME Institute.

**Series Editor:** Sohaib Jamali

**Designed by:** Mehvish Shah

This publication has been produced in partnership with the Friedrich- Naumann- Stiftung für die Freiheit. The contents of this publication are the responsibility of Policy Research Institute of Market Economy (PRIME).

**No. of copies:** 1000

**Published in:** April 2016

**ISBN:** 978-969-9824-12-8

***For inquiries:***

PRIME Institute

Office 401 Gulistan Khan House,

82-East Fazal-e-Haq Road, Blue Area

Islamabad 44000- Pakistan

Tel: 00 92 (51) 8 31 43 37 - 38 Fax: 00 92 (51) 8 31 43 39

[www.primeinstitute.org](http://www.primeinstitute.org)

Email: [info@primeinstitute.org](mailto:info@primeinstitute.org)

# Table of Contents

<b>Acknowledgements</b>	04
<b>A Personal Foreword—</b> Journey of Ideas	05
<b>Executive Summary</b>	08
<b>Chapter 1: Flat-rate Taxation</b>	13
a. Growth-oriented Taxation	14
b. Fiscal Dilemma	16
c. Tax System in Perspective	17
d. Black Economy and Tax Losses	19
e. New Paradigm—Flat-rate Tax	19
f. Determination of Direct Tax/Income-Based Method	22
<b>Chapter 2: Case for Simple Sales Tax</b>	24
a. Introduction	25
b. Case for HST	28
<b>Chapter 3: Single-rate Customs Duty Regime</b>	31
<b>Chapter 4: National Tax Agency</b>	35
a. Introduction	35
b. Proposed Structure of NTA	37
<b>Chapter 5: National Tax Tribunal</b>	39
a. Introduction	39
b. National Judicial Policy	40
c. Draft for National Tax Tribunal	43
<b>Conclusions</b>	44
<b>Appendix A: Sales Tax Base &amp; Collection</b>	46
<b>Appendix B: Tax Collection/Tax Potential</b>	50
<b>Appendix C: Blueprint of HST</b>	55
<b>Appendix D: National Tax Appellate Tribunal Bill, 2016</b>	68
<b>Bibliography</b>	80
<b>Endnotes</b>	82

**List of Tables**

Table 1: Top 10 Commodities as Contributor of Customs Duty	32
Table 2: Estimates for Loss to National Exchequer	33
Table A 1: Tax Base: Number of Registrants in Sales Tax (Domestic)	47
Table A 2: Sales Tax Filers and Compliance Ratio (%)	47
Table A 3: Sales Tax (Domestic) Collection by WRT	48
Table A 4: Sales Taxes Gross and Net Revenue Receipts 2012-13 & 2013-14	49
Table A 5: Comparison of Sales Tax Domestic (Net) Collection by Major Commodities During FY: 2013-14 & FY: 2012-13	49
Table B 1: FBR's Performance (1996-97 to 2014-15)	50
Table B 2: Comparison of Collection vis-a-vis Target 2013-14	51

**List of Figures**

Figure 1: Compliance of Sales Tax Registration	46
Figure 2: Tax to GDP Ratio Pakistan	51
Figure 3: Tax-wise Share (%) in Collection FY 2013-14	51
Figure 4: Population Distribution Over-time	52
Figure 5: Wealth Analysis	52
Figure 6: Tax Analysis	53
Figure 7: GDP and Tax Analysis	53
Figure 8: Return Analysis	54

**W**e would like to acknowledge, with thanks, the support and contribution of many people for this study. The idea to present an alternate tax system with flat rate of tax for Pakistan, mooted several times by Dr. Khalil Ahmad and Ali Salman, during the last many years, crystallised after meeting Mr. Rizwan Rawji in Brussels in September 2015, courtesy our dear friend Dr. Safdar Sohail serving at that time as Economic Minister of Pakistan Mission to European Union. Thereafter, the real inspiration came from the work of Dr. Arthur B. Laffer & Stephen Moore, *Return to Prosperity* (quoted extensively in this paper), copy of which, signed by Dr. Laffer with the remarks **“Those who are trying to make the world worse never take a day off..... How can we?”** gifted to us by Mr. Rizwan.

Conceiving and then formulating the blueprint of any workable alternate system was quite a daunting challenge, but we had motivation and immense support from learned persons that included, amongst others, Dr. Arthur B. Laffer. His centre of research, courtesy Rizwan Rawji, reviewed the contents of the paper and gave endorsement along with valuable suggestions. We are also thankful to Mr. Nicholas C. Drinkwater, Chief of Staff, Laffer Associates (103 Murphy Court Nashville, TN 37203) for his immense support.

Getting appreciation from the Guru, Dr. Arthur B. Laffer was indeed a matter of great honour for us. His work was undoubtedly a great source of inspiration to write this paper. Preparation of a comprehensive scheme for simple, broad and flat-rate taxation was made possible through continuous interaction and detailed discussions with Mr. Rizwan Rawji, Ali Salman, Dr. Nadeem Ul Haque, Dr. Safdar Sohail, and Sohaib Jamali, who encouraged us, extended their valuable guidance and made many useful suggestions to improve the study.

We are highly grateful to Mr. Ali Salman and the entire team of PRIME Institute as well as experts engaged for reviewing the paper. We also thank all those who went through the tedious task of reading and suggesting ideas for improvement. All the review editors provided much-needed input by raising pertinent questions and critically evaluating the contents of this paper. Special thanks are due to Syed Muhammad Ijaz, FCA and Advocate High Court, our partner in the firm, Huzaima, Ikram & Ijaz, for developing Figures 3 to 8 by extracting data from official documents such as FBR Year Books and Economic Surveys of Pakistan etc.

This work is dedicated to millions of Pakistanis (who, despite being burdened with enormous taxes, get nothing in return) in the hope that ultimately, with a simple, broad and flat tax system there will be prosperity for the country and its citizens.

## Journey of Ideas

No one has written as extensively on taxation in recent years in Pakistan as Dr. Ikramul Haq and Huzaima Bukhari. It should not surprise anyone, that Dr. Ikram along with his better half, Huzaima Bukhari are now considered as Pakistan's leading experts and prolific writers on the subject of tax.

When I was first introduced to Dr. Ikramul Haq, some years ago, our ideas on taxation were not in perfect harmony. I argued for a flat tax- same percentage of income tax regardless of the income level, and he was for a progressive taxation—higher income earner should pay a higher percentage of his marginal income as tax. I was told that Ikram is more of a believer in an egalitarian society and is a proponent of the progressive taxation system, so as to effectively redistribute wealth.

Ideas have consequences, rather as Khalil Ahmad would like to say, they are infectious. I believe that Dr. Ikram and Huzaima Bukhari got a protracted intellectual infection—from our first roundtable on “Pakistan's Prosperity Agenda” three years ago to their introduction to the godfather of flat taxation—Dr. Arthur Laffer, the author of “Return to Prosperity”. Dr. Laffer is known for his lasting contribution to the theory of economics and public finance, Laffer Curve—an idea which he attributes to the 12th century Muslim sociologist and historian Ibn-e Khaldun.

From a believer in progressive taxation for social justice, Dr. Ikram and Huzaima Bukhari have come to arrive to what is the crux of their study, in their own words: **“low, flat, predictable and broad-based taxes, administered through efficient tax apparatus, Pakistan can achieve fairness in taxation system.”** You read it right: flat tax will lead to fairness.

On the face of it, progressive taxation appeals to the conscience of social justice. Rich should pay more tax, proportionately, than the poor. However, even in a flat taxation mode, the rich would pay substantially more tax than the poor—in absolute sense. In fact, progressive taxation is a morally unfair idea. By adding layers of exemptions, we have also made it technologically inferior solution.

Imposition of progressive tax, and in particular, a high marginal income tax, is a disincentive to be rich and to create wealth. If I know that after, say, earning Rs. 10 million in a year, I will need to surrender seven lac rupees (Rs. 700,000) out of every additional earning of ten lac rupees (Rs. one million) to the federal government, what I will most likely do? I will not like to earn more, and rest, if the tax collection machinery is too efficient; or I will stash my additional earning through a Mossack Fonseca. This latter act will make me guilty of a crime. My original sin was just a desire to create more wealth.

Tax is needed for a government to function, not for wealth redistribution. Therefore for a legitimate tax, the government needs to be lean as well as transparent. That the government is failing in its drive to expand the tax net, regardless of tax proceeds, is a testimony to the failure of an increasingly complex, uncertain and progressive tax regime. The only solution is not doing the same but the exact opposite: move to a low, flat, broad and predictable tax regime. In its current study, PRIME's authors and fellows, Dr. Ikramul Haq and Huzaima Bukhari, have shown us a roadmap and a rationale for this structural transformation. I believe that their ideas will gain currency over time with the policy elite, for ideas have consequences, and are infectious.

**Ali Salman**  
**Founder & Executive Director**  
**PRIME Institute**



**F**ederal and provincial governments in Pakistan have shown a lukewarm attitude in restructuring the country's tax system to achieve efficiency, equity and to promote economic growth. Complex tax codes, complicated procedures, reliance on easily-collectable indirect taxes, weak enforcement, inefficiencies, incompetence and corruption are main factors for low tax collection.

Instead of broadening the tax base and simplifying laws, federal and provincial governments offer amnesties, immunities, tax-free perks and perquisites to powerful segments of society. As a result of this policy mindset, ordinary businesses and citizens suffer. This paper argues radical revamping and restructuring of the entire tax system, suggesting flat, low, broad and predictable taxes.

Tax reforms undertaken to date, have mainly been patchwork, and proven to be an exercise in futility. Tax reform commissions and consultative committees, constituted for reforming the system, have proven to be unsuccessful as they have been suggesting remedies for curing the incurable or otherwise curing symptoms rather than addressing the causes.

The so-called reforms, including World Bank-funded six-year-long Tax Administration Reforms Project (TARP), have failed to encourage people towards voluntary tax compliance. The number of tax filers has fallen significantly since 2003. The only viable option for meaningful change is to replace the existing tax system with low, flat and a predictable tax system that is simple, pragmatic, growth-oriented, and broad-based.

With such a system in place, those who are not into the tax net or who avoid true disclosures would be induced to pay their taxes voluntarily. This should be coupled with

transparent and quality spending of taxpayers' money for welfare of society as a whole and incentivizing growth and economic well-being of every individual.

This paper analyses the structural and operational weaknesses of the existing tax system at federal level and suggests alternate solutions in the following areas that require fundamental reforms:

Area	Solution
Complex Income Taxation	Flat-rate Taxation
Distorted/Multiple Sales Taxes	Single-stage Sales Tax
Customs/SRO Culture	Single-rate Customs Duty
Multiple Tax Collection Agencies	National Tax Authority
Inefficient Appellate System	Federal Tax Tribunal

These fundamental reforms will provide the basis for an alternate tax system. Tax reforms without a fair and efficient tax administration will not be enforceable. For this a new tax collecting agency, National Tax Authority (NTA), is proposed. The NTA can be assigned the task of collecting all taxes for the federation (levied in terms of Article 142 read with the Fourth Schedule to the Constitution of Pakistan by federal and provincial parliaments). This is necessary for reducing the monstrous size of multiple collecting agencies at federal and provincial levels that are marked with inefficiencies, incompetence and corruption.

Presently, taxpayers have to deal with multiple tax agencies adding to their cost of doing business. A well-equipped, automated and efficient tax agency is imperative to facilitate the citizens for discharging their tax obligations through one-window operation and also to disburse to all tax-related benefits (pensions, social security, income support etc.). The non-existence of tax-related benefits is the most neglected area of our discourse on reforms.

The existing four-tier tax appellate system has also failed to deliver. The problems faced by taxpayers in appeals/references speak volumes of the ineffectiveness of various judicial forums that have been assigned the statutory obligations to safeguard them against unjust imposition of taxes. The revenue authorities are also unhappy with the tax appellate system as litigations take years for the settlement of tax disputes. Therefore, in order to make the appellate system more responsive, the existing tax tribunals dealing with direct and indirect taxes to be restructured.

This paper proposes a two-tier tax appellate system where first appeal goes to National Tax Tribunal with the right of another appeal in the form of intra court appeal. Subsequently, if any substantial question of law needs consideration, it can be referred to the Supreme Court by way of leave to appeal. This will help in achieving uniformity of decisions since at present High Courts in different provinces sometimes differ on identical questions of law and it takes years for final authoritative pronouncement by the Supreme Court. The two-tier tax justice system can ensure expeditious settlement of tax disputes, preferably within a year's time of first order.

Income taxation at the moment is highly complex and fragmented. There is classical taxation under various heads of income, while many transactional taxes, presumptive and minimum taxes have been added to distort the entire concept of personal income taxation. This paper suggests simple and flat rate taxation of 10 percent for all entities other than companies, for which a flat rate of 20 percent is proposed.

The right to levy sales tax on goods rests with the federal government and that on services lies with the provincial

governments. Presently, federal sales tax on goods is fraught with exemptions, multiple rates (from 17% standard rate to about 70% on high diesel oil) and complicated procedures for various kinds of goods. The same position prevails with the provincial tax codes where telecommunication services are taxed at 19.5 percent in addition to 14 percent advance income tax paid by the subscribers. This kind of harmful taxation is anti-growth and anti-investment.

This paper proposes single-stage, single-digit sales tax on goods by federal government at the rate of 5 percent across the board with no exemption, albeit exporters shall have zero-rated regime. The only exemption shall be on food, life saving drugs, books, children's garments and educational equipments. Provinces can also consider imposing harmonised sales tax (HST) at the same rate on services, details of which requires a separate study.

Under the current customs law (Customs Act, 1969<sup>1</sup>), exemptions/concessions are granted to goods that are imported into Pakistan through Statutory Regulatory Orders (SROs). There are about 5,000 effectively traded tariff lines. However, SROs, covering nearly 84 percent of those tariff lines and impacting 45 percent of imports across almost all sub-sectors, have been issued over the course of years. The SRO-based customs policy has rendered the actual tariff different from the standard tariff.

As a result of this, customs tariff have multiple rates and several exemptions, and various “conditions and requirements” are to be fulfilled to avail those exemptions. This creates opportunities for the discretionary use of powers by officials, raising the cost of doing business and incentivising

---

<sup>1</sup> *Special classification in Chapter 99 of Pakistan Customs Tariff*

malpractices and mis-declarations for evading duties. Recognizing these problems, this proposes that there should be a single slab of 5 percent for all imports to end these undesirable practices.

The crux of the paper is this: low, flat, predictable and broad-based taxes, administered through efficient tax apparatus, Pakistan can achieve fairness in taxation system. It will create incentives for better compliance and lead to accelerated economic growth. A paradigm shift is required to restructure the entire tax system to induce more investment, accelerate growth and ensure economic prosperity for the country benefitting all members of society.

“

A tax system's function should be solely to raise enough revenues in order for government to perform its requisite tasks. While all taxes are bad, some taxes are worse than others. So what you want your government to do is to collect taxes in the least damaging way possible, but still able to raise the requisite amount of revenues for government to function effectively. In addition, because of the damaging consequences of taxes, government should spend as little as possible in achieving its objectives. Efficiency in government spending is essential for economic prosperity

”

*—Dr. Arthur Laffer Keynote address at the  
“Africa 2025” Conference held on November  
23rd and 24th, 2015 in Casablanca)*

**“Unlocking tax revenue potential requires broadening tax bases, strengthening revenue administration and taxpayer compliance, eliminating distortionary tax expenditures, and rationalizing tax policy for greater efficiency and equity through a comprehensive and front-loaded reform agenda”<sup>i</sup>.**

Pakistan’s telecom sector is the second highest taxed in the world [19.5 percent GST, 14 percent advance income tax, corporate tax of 32 percent etc] which discourages investors, resulting in lower third generation and fourth generation penetration, not to mention a dramatic drop in foreign direct investment<sup>ii</sup>.

### **a. Growth-oriented Taxation**

One of the main objectives of taxation is to increase the level of savings and capital formation in the private sector, partly for borrowing by the government and partly for enhancing investment resources within the private sector for economic development. In Pakistan, this goal is yet to be achieved. Recent years have witnessed the closure of many large industries and stagnation in economic growth. There are many factors behind this, of which one important one is oppressive and inconsistent tax policies of successive governments.

The highhandedness of Federal Board of Revenue (FBR) in meeting revenue targets, complex revenue codes, especially enormous withholding tax liabilities, long-drawn litigations, and blockade of bona fide refunds, are forcing Pakistan’s business community to search for better avenues abroad. Similarly, foreign investors are reluctant to avail opportunities in Pakistan because of the prevailing anti-business climate, and as a result Pakistan loses on potential technological transfers, rapid industrial growth and employment generation.

Yet, the governments' preoccupation with annual revenue targets has diverted their attention from the need to devise a stable investment-oriented tax system promoting infrastructure development, investments and employment generation.

The existing tax system discourages corporatization of business. In Pakistan, corporate taxation is still as high as 43 percent (company tax rate plus tax on dividends). At present there are only about 66,000 companies registered with Securities Exchange Commission of Pakistan, out of which only 24,000 are active tax filers. Such low level of compliance can be attributed to numerous anti-corporate provisions in the tax codes.

For instance, after collecting billions as 'collection agents' of the state, without any compensation, the companies are penalized for inadvertent lapses that are neither intentional nor wilful. Taxation of notional benefits e.g. concessional loans in the hands of employees, high corporate tax rate and double taxation of dividends and reserves out of already-taxed profits are some examples of anti-corporate provisions. In such circumstances, conducting business through a company is discouraged, especially when audited accounts by independent and credible auditors are whimsically rejected by taxation officers without putting any objectionable material on the record. As a consequence, litigation is imposed on the companies and they have to incur huge cost to get justice<sup>iii</sup>.

Aside from being anti-corporatization, the existing tax system also promotes parallel economy. Due to overemphasis on withholding taxes, the people want to conceal their actual transactions and do business through multiple names, in each case keeping lower threshold to avoid coming into the ambit of withholding provisions (which are now 58 in number!). With broad, low and flat- rate taxation not only higher amounts are collectable but rapid corporatization of business is also possible.



However, instead of simplifying the tax regime, in 2015 ‘Tax on undistributed reserves’ [section 5A of Income Tax Ordinance, 2001] was imposed on companies, ignoring that reserves are created from already-taxed income. ‘Minimum taxation’ of 8 percent of gross turnover of service sector companies was another wrong move. In 2014, ‘Alternative Corporate Tax’ [section 113C of Income Tax Ordinance, 2001] was levied.

This erratic, arbitrary and expropriate taxation has further retarded Pakistan’s corporate sector growth. On the other hand, tax evasion and avoidance is perpetually encouraged for which yet another amnesty was granted on January 21, 2016 by National Assembly through Income Tax (Amendment) Act, 2016<sup>iv</sup>, despite protest and boycott from opposition parties.

## **b. Fiscal Dilemma**

Even after levying all kinds of taxes, the federal government has failed to bridge the ever-increasing fiscal deficit that is creating a greater debt burden; at present 60 percent of tax revenues are going towards debt servicing alone<sup>v</sup>. The provincial governments too are not generating sufficient funds at their own; nor are they properly utilizing the available resources for spending on health, education and other critical public services. Instead, they are critical of inefficiencies of the FBR. The provinces claim that due to low collection by FBR, their respective share in the overall divisible pool is inadequate to meet annual budgetary requirements.

Since the share of every province in federal taxes under the National Finance Commission (NFC) is dependent on how efficiently and fairly taxes are collected by FBR, it is important that federal and provincial governments work collectively under a single agency. No serious debate has been initiated on the issue so far to suggest ways and means for collecting taxes efficiently, fairly and justly. How to increase the size of the cake to ensure that both the centre and provinces have sufficient funds to run the governments is the most critical question that needs to be holistically examined.

### c. Tax System in Perspective

For the last twenty years, critics have been pointing out shortcomings in the existing tax system<sup>vi</sup>. They are of the view that even after the reforms since 2003, there has been little or no improvement; many in fact say that things are getting from bad to worse<sup>vii</sup>. There is consensus that Pakistan suffers from massive revenue leakages owing to structural issues in the outdated tax system that exists today.

The prevailing large size of undocumented economy has much to do with the way taxes are being administered for the last many decades. Over the last many years, successive governments have reduced their reliance on direct taxes, and instead increased their reliance on indirect ones. Even the Inland Revenue Service has transferred a major portion of its responsibilities of collecting tax on withholding tax agents leaving very little to justify its own existence<sup>viii</sup>. Moreover, complicated procedures both at the federal and provincial levels, especially after the 18th Constitutional Amendment, have kept businesses from coming into the fold of formal sector.

In short, the life of a compliant taxpayer has become miserable, depriving him/her of the motivation to be an honourable taxpaying citizen of this country. The helplessness of seeing one's hard-earned money going down the drain has compelled many to look for greener pastures around the world where their taxes would trickle down in the form of some benefit to them.

Under these circumstances, it is imperative to devise a system that would ensure voluntary compliance, boost businesses, ensure transparency, allow markets forces to flourish with responsibility, and at the same time help generate substantial revenue for governments to function comfortably. There is no doubt that a logical scheme of things capable of raising large revenues without disrupting the life of an ordinary business or citizen would be a welcome respite.

Another important factor that discourages compliance with tax laws is the complicated and cumbersome nature of procedure involved in getting registered with revenue authorities. Even corporations and educated class finds it difficult to comprehend, follow and observe the simultaneously applicable innumerable legal obligations.

There are almost 58 provisions of advance taxes. However, if a survey of just those provisions is conducted, it would reveal how a person is supposed to be aware of so many avenues where tax is either being withheld, or he is himself paying income tax, the credit of which he may or may not be allowed to take while filing his annual return of income. In the first instance, a highly meticulous record of all such transactions that invoke taxes would have to be maintained, and secondly, an even higher grasp of law would be required to apply it<sup>ix</sup>.

Given the present level of inflation and high cost of living, the minimum threshold of income (Rs. 400,000) where no income tax is to be paid nor a return needs to be filed is within reach of an overwhelming population, including people who are earning income from simple employment, trade and vocations. With the prevailing standards of literacy in the country it is unrealistic to expect a common man to have any cognizance about tax laws. Had taxation been restricted to simple arithmetic, the situation would have been much better, and the people would not have been discouraged from paying taxes.

In contrast, no exemplary punishment has been meted out to confirmed tax evaders, nor has there been any effort made at the grass root level to educate the public about their tax obligations. This is despite the fact that the law requires that tax officers should counsel and guide the taxpayer with respect to his duties and rights.

#### **d. Black Economy and Tax Losses**

Tackling twin menaces of black money and tax evasion has always been a failure in Pakistan. In fiscal year 2014-15, FBR collected Rs. 2.58 trillion against documented GDP of around Rs. 24.7 trillion (Details of low tax collection under the existing system and real potential are highlighted in Appendix B). The black economy is driven by many aspects of poor fiscal policy, and as highlighted by Dr. Laffer: “it isn’t just high tax rates that indicate whether illicit trade activity will be a problem, but rather high tax rates coupled with other factors such as affordability, level of corruption, effectiveness of enforcement, and cultural and societal reasons”<sup>x</sup>.

Instead of dealing with these issues, successive governments have been pardoning and appeasing tax evaders through various laws and amnesty schemes. The result is obvious: there is an ever-growing informal economy. Therefore, this paper proposes that instead of announcing periodic tax amnesties, the government should ask all citizens to take benefit of flat rate of 10 percent and file returns for past years without any penalty or additional tax. Those who fail to do so should be dealt under the law.

#### **e. New Paradigm—Flat-rate Tax**

“...the best tax is one that has the lowest possible tax rate on the largest tax base. The lowest rate creates the least incentive to evade, avoid, or otherwise not report taxable income, while the broadest tax base provides the minimum number of places to which people can escape from reporting taxable income. My flat tax does exactly this. My proposal improves our nation’s tax system by broadening the tax base and significantly lowering marginal tax rates. Combining the largest possible tax base with the lowest possible tax rate provides people the smallest opportunity to avoid paying taxes and the lowest incentive to do so. Reduced incentives to avoid or evade taxes result in a reduction in the associated costs of monitoring these activities. In addition, lower tax rates go hand in hand with greater incentives to work and produce”<sup>xi</sup>.

A fresh approach towards taxation is needed for achieving fairness, growth and fiscal stabilisation. Hypothetically speaking, if federal government needs Rs. 7 trillion of taxes for meeting all development and non-development expenditure, it must determine a fair tax base to achieve this objective. The current tax system is only benefitting those who can flout the law, and those who help them do it.

This paper suggests a simple flat rate tax that is neither burdensome nor difficult to implement. A flat tax may harm the interests of a few, and they would certainly oppose it. However, if Pakistan has to overcome the twin inter-related malaises of fiscal deficit and debt burden, then there is no option but to dismantle the existing, out-dated and anti-growth tax system.

Arthur B. Laffer has elaborated the theory of ‘**Flat Tax**’ for United States that can address our problems as well. He aptly observes:

*“Excessive taxation is detrimental to labour and capital, poor and rich, men and women, old and young. Excessive taxation is an equal opportunity tormentor. Businesses locate their plant facilities in order to make higher after tax returns for their owners. In the short run, higher taxes on labour or capital lower after tax earnings. During depressed times, businesses are often desperate to reduce costs because of a shortfall in revenues. Increased taxes in one location can be the final straw leading to businesses’ relocating to more tax friendly locations or making the ultimate decision to close down operations. In the longer run, immobile factors (such as low wage workers and commercial and residential real estate) are left to suffer the tax burden”<sup>xii</sup>.*

Referring to the significance of mode of taxation, Dr. Laffer draws justification from a noted nineteenth century American economist Henry George who wrote in his book, “Progress and Poverty” (1879):

*“The mode of taxation is, in fact, quite as important as the amount. As a small burden badly placed may distress a horse that could carry with ease a much larger one properly adjusted, so a people may be impoverished and their power of producing wealth destroyed by taxation, which, if levied in any other way, could be borne with ease”<sup>xiii</sup>.*

There has to be a source of motivation for taxpayers to comply voluntarily and to some extent eagerly in contributing towards the national exchequer. Whenever governments across the globe resort to high-handedness in collecting taxes, the people term it as broad daylight robbery, and start evading taxes. This is propounded by Laffer as under:

*“The theory of incentives provides the basis for the concept of a flat-rate tax, which is so called because a tax applies equally to all sources of income and does not change as a result of taxpayer’s volume of income. Any exemptions, deductions, differential rates, or progressivity would, as a matter of linguistics, preclude the name flat tax. They also represent a deviation from the principles of efficient taxation. Such exemptions to the even application of a single narrow tax base, lead to a higher tax rate, make for greater complexity, and increase tax avoidance”<sup>xiv</sup>.*

Keeping in view our peculiar socio-economic circumstances and general public mind-set, the tax system that will work smoothly for Pakistan, must be a flat-rate system with no compliance hassles. All taxes should be merged into one single tax with complete assurance to the citizens that they would be free from any kind of harassment; and money collected would be judiciously spent.

The agenda of fair taxation cannot succeed if wastage of public funds and its abuse by the successive governments continue unabated. The quid pro quo for paying taxes is as important as the system to collect tax. While the public is blamed for not

paying their due share, revenue collection authorities are perhaps equally responsible for indulging in corrupt means, taking the cover of complicated procedures that eventually lead to poor collection of revenue. The solution thus lies in the broad, simple, and predictable flat tax<sup>xv</sup>.

The tax base with respect to direct tax vis-à-vis fair distribution of incidence can be achieved as under:

1. 20 percent flat rate corporate entities; and
2. 10 percent flat rate tax on individuals.

This kind of simple taxation would induce voluntary compliance, provided all the citizens are aware of the fact that competent and effective tax machinery exists having an intelligence system that can easily detect tax avoidance. Without this deterrence even the new system which is a great deal simpler, will be unworkable. Nowhere in the world is proper collection of taxes possible without a strong enforcement apparatus. However, the apparatus should be friendly and firm – friendly, to the extent of educating and guiding the people for fulfilment of their tax obligations, and firm to the extent of punishing wilful defaulters.

#### **f. Determination of Direct Tax/Income-Based Method**

According to available data<sup>xvi</sup>, the total number of persons having taxable income of more than Rs. 400,000 is between 10 to 12 million, and the tax base is around Rs. 50 trillion<sup>xvii</sup> (after taking into account informal economy). Flat-rate taxation of just 10 percent with strong enforcement system will yield Rs. 5 trillion under income tax alone from individuals. (Data for this estimation is available at Appendix B).

As per study of the Tax Reform Commission, **“in Pakistan the corporate tax rate is much higher than other countries in the region. The average rate of tax on the corporate incomes in the Asian region is 22.89% whereas in Pakistan due to multiplicity of the taxes for the corporate sector it goes up to 40% (33% normal tax +2% Workers' Welfare Fund + 5% Workers' Participation Fund)”**.

At present, Pakistan has one of the highest corporate tax rates in the world that is 33% (banks are taxed at 35%). Other countries have: Australia 30%, Austria 25%, Bangladesh 27.5%, Canada 26%, China 25%, Cyprus 10%, Germany 29.48%, Greece 20%, Malaysia 25%, Netherlands 25%, Singapore 17%, Sri Lanka 28%, Thailand 23%, Turkey 20%, United Kingdom 24%, Vietnam 25% and Zimbabwe 25.75%.

Pakistan must follow the other countries to induce more investment through new companies that elicit public offerings. In order to have more listed public companies, lower rate is a prerequisite.

20% flat tax on corporate sector will encourage people to corporatize business and avail credit facilities from banks. It will promote documented economy and generate employment.



## Case for Simple Sales Tax

“

On the revenue side, the biggest challenge was extremely adverse impact of the declining oil prices adversely affecting the most important contributor to revenues from the oil and gas sector and its numerous upstream and downstream activities. The rapidly falling inflation and consequent decline in the projected nominal GDP further compounded the tax revenue problems. The combined effect of these factors was an estimated shortfall in FBR collections of Rs. 205 billion—a fall from Rs. 2810 billion to Rs.2605 billion<sup>xviii</sup>.

”

## a. Introduction

Pakistan is in dire need of revisiting its fiscal policy in a holistic fashion. Presently, the powers to collect major taxes are concentrated in the hands of the federal government. Even the country's constitution denies provinces the right to levy sales tax on goods within their respective territories - a right available to the federating units at the time of independence<sup>xix</sup>. This issue was never raised by any province during the deliberations for 18th Constitutional Amendment or 7th National Finance Commission Award<sup>xx</sup>. The provinces have also shown apathy to devolve administrative and fiscal powers to local governments despite clear command contained in Article 140A of the constitution.

Ideally, as in many other federations, the provinces should have the exclusive right to levy indirect taxes on goods and services within their respective administrative boundaries. Right to levy any tax on goods should be restored to the provinces as was the case at the time of independence. Despite levying taxes that should have been with provinces, the federal government has failed to reduce the burgeoning fiscal deficit that reached Rs. 1.8 trillion during the fiscal year 2013-14<sup>xxi</sup>.

Sales tax administration at federal and provincial levels as exist today is neither helping the government to harness the actual revenue potential, nor helping the taxpayers in terms of ease of doing business. In fact, the problems of the taxpayers have increased multi-fold since the establishment of provincial revenue authorities<sup>xxii</sup>. There are still many unresolved issues both between the provinces and the centre, as well as among the provinces. In this scenario, harmonised sales tax (HST<sup>xxiii</sup>) can be an answer<sup>xxiv</sup>.

In 2011-12, there were about 62,000 total domestic registrants with sales tax department, of which there were 8,174 retailers

and 53,314 wholesalers (Appendix A). This implies that sales tax registrants in wholesale & retail trade were more than 24 percent of sales tax base in 2011-12, up from 18 percent in 2001-02. Considering that there are nearly two million wholesalers & retailers in the country, the share of wholesale & retail sales tax registrants presently is less than 5 percent. This effectively means that like various other sectors the revenue contribution by wholesalers & retailers is also very dismal. As a whole, the wholesale & retail sector contributed around 0.5 percent in total federal taxes, which is quite low as compared to its 17 percent share in GDP (Appendix A). This reflects a huge tax gap, even if we ignore the mammoth size of parallel economy.

Quite naturally, therefore, **“the collection of sales tax has been highly concentrated in few commodities. This is confirmed by the fact that petroleum products alone contribute around 44 percent of the total sales tax domestic collection. A handful of 10 items including POL and natural gas shared 73 percent of the total net sales tax domestic<sup>xxv</sup>”** in 2015.

The following itemized facts for fiscal year 2014-15 expose the narrow base of sales tax and lack of enforcement:

- **Net collection under sales tax: Rs. 1087.7 billion. of which:**

Imports  
Rs. 556.6 billion

Domestic  
Rs. 531.2 billion

- **Sales tax collection on POL products:**

Imports  
Rs. 166 billion (29.8%)

Domestic  
Rs. 233.2 billion (43.9%)

- Out of total 175,000 registered taxpayers only 117,072 (67%) filed returns and only 55,000 (less than 32% of registered persons and 0.025% of total population of the country) paid any tax.
- Out of total domestic sales tax collection of Rs. 531 billion, more than 89 percent was paid by only less than 400 entities. In other words, only 0.19 percent of the registered taxpayers contributed more than 89 percent of sales tax.
- The effective<sup>xxvi</sup> sales tax rate for total domestic sales is 4.55 percent. This rate is 6.81 percent, 7.96 percent, 8.36 percent and 13.56 percent for top 40, 30, 20 and 10 sales tax paying entities respectively. This shows that domestic sales made by more than 99 percent of taxpayers contribute sales tax at effective rate less than 4.55 percent.

As with the case of income tax, one of main reasons behind high non-compliance of sales tax in Pakistan is higher compliance cost to businesses. It takes about 480 hours (per year) to pay sales tax in Pakistan as opposed to world average of 108 hours<sup>xxvii</sup>. On the other hand, VAT compliance cost in other developing countries is much lower. For example, the VAT compliance cost in Nepal and Bangladesh in terms of times required for VAT payments is 122 hours and 162 hours, respectively.

An important reason behind high cost of compliance is the multiplicity of sales tax rates. It is because rate differentiation entails the need to ensure that products are correctly categorised. At the same time, multiple rate system increases opportunities for avoidance, and therefore increases the costs to government of administering the value-added system. It is empirically established that multiple rates tend to reduce VAT compliance and increase tax evasion. Using cross-country data, Agha and Haughton (1996) find that having an additional rate of VAT is associated with a 7 percentage point increase in tax evasion, and thus undermine the equity goals normally attached with multiple rates system<sup>xxviii</sup>.

Rate differentiation has also increased illegal input tax adjustments and inadmissible refunds in Pakistan. As a result, sales tax-gap was estimated to be Rs. 755 billion in 2012, and the effective rate was reduced to 3.9 percent as opposed to the then statutory rate of 16 percent<sup>xxix</sup>. The extent of illegal input tax adjustment and inadmissible refunds can be gauged from the fact that increase in export sales in 2011 and 2012 was 37.36 percent and 31.56 percent over the base year of 2010, while the increase in related sales tax refunds was 114.32 percent and 82.21 percent in these years.

Multiple rates are often justified on equity grounds. However, multiple sales tax rate system has not contributed to maintain equity in Pakistan. Empirical evidence shows that the sales tax incidence at the bottom 20 percent appeared to be very high. While this increased further for the middle classes, it came down for the richest segments of the population between the years 1991 to 2002. This suggests that the sales tax burden is borne by the poor and the middle class is proportionately higher compared to the burden borne by richer segment of the population<sup>xxx</sup>.

As a result of these pervasive problems, the existing sales tax regime<sup>xxxi</sup> at federal level is a failure; neither the collection is as per actual potential [See Appendix A], nor the goal of ease of doing business has been achieved<sup>xxxii</sup>. Since the inception of Tax Administration Reforms Programme (TARP), the FBR has failed on all fronts: in meeting revenue targets, broadening of tax base, implementing sales tax, increasing share of direct taxes and improving tax-to-GDP ratio. Despite having both money and expertise, FBR could not introduce an effective automated tax intelligence system to bridge the huge tax gap. At the end of TARP, tax-to-GDP ratio nosedived to 8.8 percent from 9.4 percent in the year when the programme started. [Appendix B].

At the completion of TARP, the World Bank, in its report titled **“Implementation, Completion and Result Report”** observed that “the current narrow-base of general sales tax (GST) in Pakistan remained almost entirely unchanged throughout 2005-2012, despite efforts to overhaul the indirect taxation structure by introducing a reformed GST featuring few exemptions and wide coverage of goods and services.”

For evaluating FBR’s overall performance during the TARP, the World Bank used GST administration as an indicator. The results compiled were highly disappointing: GST productivity turned out to be only 23 percent in Pakistan, compared to an average ratio of 34 percent worldwide. According to the World Bank, **“the estimation covering the project life reflected an overall decreasing trend during 2005-06 to 2010-11 suggesting feeble tax administration efforts throughout the reform period.”**

Majority of taxpayers say they are ready to pay sales tax on all transactions involving goods and or services, but that the complex sales tax system currently in place is not viable in Pakistan’s peculiar milieu. As a result of the issues highlighted above, the effective collection rate under sales tax has been reduced to 3.7 per cent, against the standard rate of 17 per cent<sup>xxxiii</sup>. In this light, it is advised that single-digit sales tax at the rate of 5 percent is imposed.

## **b. Case for HST**

In the wake of 18th Constitutional Amendment the fiscal management, both at federal and provincial levels needs revision. The federal government, having all buoyant and broad-based taxes is not collecting substantial taxes, while provinces, which are almost entirely dependent on the divisible pool under National Finance Commission (NFC) Award, have failed to raise their own resources for their ever-growing needs of development.

In these circumstances, Pakistan needs a paradigm shift in tax policy and revamping of the entire tax administration by establishing National Tax Agency (NTA)<sup>xxxiv</sup>. Through consensus and democratic process, all the parliaments can enact laws for establishing the NTA, which shall be an autonomous body comprising of specialists and professionals that would facilitate people to deal with single body rather than multiple agencies at national, provincial and local levels. The working of NTA can be discussed and finalised under Council of Common Interest [Article 153]. The control of NTA should be under National Economic Council [Article 156].

The introduction of simplified single-digit sales tax of 5% by federal government and ultimately the introduction of Harmonised Sales Tax (see blueprint at Appendix C based on the experience of Canada) may be seriously debated. Tax collection and compliance cannot be improved without introducing simplified sales tax regime and establishing the NTA.

An integrated Tax Intelligence System that can correlate sales tax collections on goods and services with income tax returns and monitor all transactions should be developed. A fully automated, professional and efficient NTA would alone be in a position to enforce tax obligations. Before establishing NTA, major information technology and human resource improvements in tax collection methods as well as effective audit techniques should be developed along with development-oriented tax policy.

Tax reforms are meaningless without an effective tax administration and rational tax policy. As a medium-term reform measure Pakistan must concentrate on debating and finalising the structure of NTA for achieving the goal of a functional, efficient and integrated tax administration. The model of Canadian Revenue Agency ([www.cra-arc.gc.ca/menu-eng.html](http://www.cra-arc.gc.ca/menu-eng.html)) is worth-studying in this respect.

# Single-rate Customs Duty Regime

31

Chapter 3

A host of issues surround the customs in Pakistan. These include but not limited to under invoicing, and valuation rulings much below international prices. However, before one begins to discuss those issues, a quick look at the structure of taxes received under customs is warranted.

Customs duty contributed around 19.6 percent and 11.8 percent in indirect taxes and federal taxes respectively during 2014-15. Dutiable imports constituted around 57 percent of total imports during 2014-15. Customs collection recorded a significant growth of 26.1 percent during 2014-15 due to increased dutiable imports by 52 percent after the current government withdrew a number of customs SROs and replaced 0 percent slab by 1 percent.



The ten major commodities that contributed around 58 percent of the customs duty during fiscal year 2014-15 were:

**Table 1: Top 10 Commodities as Contributor of Customs Duty**

S. No	Description in ( ) PCT Headings	2014-15 (Rs. M)	2013-14 (Rs. M)	Growth (%)	Share (%) 2014-15	Share (%) 2013-14
01	Vehicles and Parts (87)	49,409	36,314	36.1	15.7	14.4
02	POL Products (27)	24,413	16,761	45.7	7.7	6.7
03	Electrical Machinery (85)	22,584	11,326	99.4	7.2	4.5
04	Edible Oil (15)	21,183	20,659	2.5	6.7	8.2
05	Mechanical Machinery (84)	20,289	13,742	47.6	6.4	5.5
06	Plastic (39)	13,198	11,056	19.4	4.2	4.4
07	Iron and steel (72)	10,713	5,820	84.1	3.4	2.3
08	Paper & P. Board (48)	8,161	5,900	38.3	2.6	2.3
09	Articles of Iron and Steel (73)	6,441	3,391	89.9	2.0	1.3
10	Staple Fibers (55)	6,024	3,948	52.6	1.9	1.6
	Sub Total	182,415	128,917	41.5	57.9	51.3
	Other	132,896	122,625	8.4	42.1	48.7
	Gross	315,311	251,542	25.4	100	100
	Refund/Rebate	9,091	8,732	4.1		
	Net	306,220	242,810	26.1		

Source: FBR Review 2014-15

The above table clearly shows that customs also has a very narrow base. In its final report, the Tax Reform Commission (TRC) constituted by the government emphasized that **“there is a need to reform and rationalize the customs tariff keeping in view certain determined parameters.”**

While the TRC has not disclosed those parameters, its report says that *“a specialized committee is currently working on the proposed parameters for rationalization of custom tariff.”* The report adds that the proposed parameters and related recommendations would be finalized in due course. **The delay, it says, is mainly “due to non-availability of data on time.”** The report, however, does contain certain recommendations

in respect of customs – the most important of which is “to facilitate bona fide importer and exporter and to reduce the abuse of powers by the Customs officials”<sup>xxxv</sup>.

During the financial year 2013-14, FBR carried out an exercise to rationalize the import tariff structure, and to reduce the general tariff slabs from 7 to 4 in the next three years. Accordingly, peak tariff slab of 30 percent was reduced to 20 percent. There are now 5 tariff slabs with the peak of 20 percent and floor of 2 percent. These slabs, according to FBR, will be reduced to 4 by June, 2016.

The approach of TRC and FBR towards rationalizing customs tariff needs to be reconsidered. There are many chronic issues with customs. These include: under-invoicing, mis-declarations, smuggling and valuation rulings much below the international prices. These are not only causing a loss to national exchequer but also hurting open markets. Official figures of smuggling for the last three years are:

**Table 2: Estimates for Loss to National Exchequer**

Year	CIF Value (Rs. Millions)
2014-15	24486.28
2013-14	7409.32
2012-13	5328.83

*Source: FBR Review 2014-15*

In Pakistan, more than 2000 valuation rulings have been issued by custom authorities, under section 25 of the Customs Act, 1969. By comparison, in India no more than 10 valuation rulings under comparable section 14 of Indian Customs Act have been issued. The discretionary powers available to Director of Customs Valuation are often reported to be abused, whereas powerful sections in trade use money and influence to get favourable rulings.

There is no provision to fix standing prices of any goods or class of goods under section 25A. The power under section 25A is not exercised on a consignment to consignment basis with presentation of declaration under section 79 of the Customs Act. The prevalent practice of resorting to the old procedure of fixation of International Trade Price (ITP) is also void and against the provisions of section 25 of the Customs Act, 1969<sup>xxxvi</sup>.

The single rate (5 percent) customs duty for all items can eliminate the menace of smuggling, arbitrary and/or favourable valuations, complicated registration processes as well as the SRO-ridden system.

## a. Introduction

Given the lacunas, duplications and shortfalls in Pakistan's tax collection, it is proposed that all tax collection agencies in Pakistan are dismantled and merged into a single entity called National Tax Agency (NTA), to ensure effective enforcement of tax laws both at federal and provincial levels.

The NTA ought to be set up on modern lines, staffed with competent and effective professionals, should have representations of all constituents of the federation of Pakistan. With nation-wide data at one place and centralized processing, the NTA will certainly be able to compel all taxable persons to file tax returns and pay their dues under various tax codes.

The NTA must replace FBR and all ineffective provincial revenue authorities that have been unable to collect revenues according to their actual potential. For example, provincial revenue boards have not been collecting agricultural income tax, imposed since 2000. Similarly, provincial excise and taxation departments are not collecting taxes to their full potential. Likewise, the capacity of Punjab Revenue Authority, Sind Revenue Board and Khyber Pakhtunkhwa Revenue Authority to tax all taxable services is quite inadequate.

The case for having a new and single tax collection agency is strengthened by the World Bank's assessment of FBR's credibility and usefulness as an organization. (Its over-all poor performance in tax collection is evidenced in Appendix B). The World Bank concluded that "during the economic crisis period and subsequent years (2008-11), GST productivity index declined at a higher rate compared to tax-to-GDP ratio despite a swift turn-around in project implementation and concomitant positive trends in some outputs by the last two years of project life". The report pointed out weak compliance levels, lackluster results in reform implementation, especially those related to short term actions aimed at curbing evasion through more effective enforcement actions by the final year of project implementation.

The World Bank also noted that **"performance from 2008 onwards, (were) far from the project's objectives envisioned at the outset."** At the end of TARP, sales tax, income tax indicators were extremely poor. Out of total population of 180 million less than 1.45 million filed returns in 2011; disturbingly the share of business returns was only 35.5 percent. The situation has further deteriorated since then, as total returns received in 2014 were less than one million.

In spite of imposing additional taxes of Rs. 360 billion, blocking more than Rs. 220 billion of tax refunds and taking advances of many billions, FBR failed to meet its revised target for fiscal year 2014-15. Its collection for 2014-15 showed a

shortfall of Rs. 222 billion, vis-à-vis original target of Rs. 2810 billion, which was first reduced to Rs. 2691 billion and then to Rs. 2605 billion.

## **b. Proposed Structure of NTA**

The National Tax Agency should be established on the pattern of Canada Revenue Agency, where it should not only be responsible for collection of taxes for federal, provincial and local governments but also administer various social and economic benefits and incentive programmes delivered through the tax system. It is important that these schemes which may include social security, disability allowance, income support, child support, and pension -are formulated and identified; otherwise tax compliance would become a distant dream.

One of the salient features of NTA would be its innovative structure, an independent Board of Management, accountable to parliament through the Minister of Finance and Revenue. The Minister would have the authority to ensure that the NTA operates within the overall government framework and treats its clients with fairness, integrity, and consistency.

NTA's Board of Management would consist of 15 members, three each to be nominated by each of the provinces, and the rest by the central government. The Board would have the responsibility of overseeing the organisation and management of the NTA. The Chief Executive Officer of the NTA, being a member of the Board, elected by majority of members, would be responsible for the NTA's day-to-day operations. The NTA Board would have no role in the legislation, which under the constitution of Pakistan is the exclusive domain of the national and provincial assemblies.

The guiding principles of NTA would be:

**Integrity:** This will be the foundation of administration to ensure that citizens and are treated fairly through fair application of the law.

**Professionalism:** It is the key to success in achieving the mission, and demands being committed to the highest standards of achievement.

**Respect:** This shall be the basis for dealings with employees, colleagues, and clients. It also means being sensitive and responsive to the rights of individuals.

**Co-operation:** This principle will be the foundation for meeting the challenges of the future by building partnerships and working together toward common goals.

At present, both the centre and provinces are not collecting taxes diligently, and it is plausible that the same would be the case once local governments are elected. The country's tax potential at federal level alone is Rs. 7 trillion. If agricultural income tax and other provincial and local taxes are also collected efficiently, the total figure at national level would be around Rs. 12 trillion.

NTA is the need of the hour to harness the full tax potential at federal, provincial and local government levels. Through consensus and democratic process, all the parliaments can enact laws for establishing the autonomous NTA that can facilitate people to deal with a single revenue authority rather than multiple agencies at national, provincial and local levels. The mode and working of NTA can be discussed and finalised under Council of Common Interest [Article 153] and its control can be placed under National Economic Council [Article 156].

## a. Introduction

All the major tax codes<sup>2</sup> of Pakistan provide grievance redressal mechanisms for taxpayers against the orders of tax officials and appellate authorities. The right of appeal against orders of the first appellate authority, which is the Commissioner of Appeals or Collector of Adjudication, is available to the tax administration as well. This is because it is not uncommon that tax authorities are aggrieved at the relief granted by the appellate authorities to taxpayers, and a higher appellate forum to examine the correctness of relief given by an appellate authority is justified.

---

<sup>2</sup> *Income Tax Ordinance, 2001, Sales Tax Act, 1990, Federal Excise Act, 2005 and Customs Act, 1969*



The appellate mechanism under the tax codes provides right to appeal before the Commissioner of Appeals/Collector of Adjudication in case a taxpayer is aggrieved by orders passed by the revenue authorities. In case the taxpayer or even the Commissioner/Collector is aggrieved by the decision of the Commissioner of Appeals/Collector of Adjudication, the aggrieved party can carry the matter further in appeal before the Appellate Tribunal Inland Revenue (ATIR) or Customs Appellate Tribunal as the case may be.

Tax Tribunal in the sub-continent was established on 25th January, 1941. On 28th October 2009 it was renamed as Appellate Tribunal Inland Revenue (ATIR) through a Presidential Ordinance in Pakistan in the wake of amalgamation of income tax and sales tax into one unified group. ATIR is not only an appellate forum for the taxpayers, but it is an equally important forum for FBR aggrieved of any relief given to the taxpayer by Commissioner of Appeals, who is incidentally a member of the Inland Revenue Service.

In developing economies like Pakistan, one of the biggest problems is a relatively small tax base and the reluctance of ordinary citizens to file tax returns. However, once a taxpayer professes faith in the effectiveness of legal remedies against an unjust tax levy or unjust action of the taxation authorities, he would be more likely to be truthful to the taxation authorities, and willing to accept a reasonable levy of tax.

## **b. National Judicial Policy**

The following points merit consideration for effective and meaningful implementation of directions given in the National Judicial Policy (NJP) 2009:

1. Existing four-tier appeal system under the tax laws consumes so much time for final settlement that the very

purpose of seeking remedy becomes meaningless. 'Justice delayed is justice denied' aptly applies to the existing tax appellate system. The government has borrowed millions of dollars from the World Bank and other donors for tax reforms, but no effort has so far been made to revamp the ailing tax appellate system for rapid disposal of tax disputes and reduction in unnecessary litigation.

2. The first appeal under the prevalent four-tier appellate system lies before the Commissioner of Appeals/Collector of Adjudication working under the administrative control of FBR. This is a travesty of justice: an aggrieved taxpayer is to seek relief from the departmental authorities. In view of this fact alone, the first-tier of appeal should be abolished immediately.

3. The second tier i.e. Tax Appellate Tribunal (one dealing with Customs and second with all other indirect and direct taxes) is under the federal government (Ministry of Law), which is against the principle of "independence of judiciary" as highlighted in Para 5, page 12 of NJP 2009.

Working as single, double or full (in special cases) benches, members of the appellate tribunal are chosen from the legal fraternity or judicial services (Judicial Member) and the tax department (Accountant Member or Technical Member). The latter have little or no incentive to work in their respective positions, as they are mostly deputed against their consent. This negatively impacts the functioning of the tribunal. In view of this, appellate tribunals should work under direct supervision of the Supreme Court and appeals against its decisions should go directly to the Supreme Court.

4. After merging Appellate Tribunal Inland Revenue and Customs Tribunal, the new entity should be renamed as National Tax Tribunal. Appeals against the orders of the

Tribunal should lie with the Supreme Court alone. Members for Tax Appellate Tribunal should be recruited in the same manner as judges of High Court.

5. Tax codes are federal statutes but references against orders of the Tribunal go to the High Court that operates within provincial jurisdictions. In practice, therefore, a person filing reference in Lahore High Court may get a different order on an identical issue filed in Sindh High Court. Ergo, even on identical issues, there is no certainty of uniform orders at the level of High Courts. It is hence advisable to place the Tax Appellate Tribunal directly under the Supreme Court.

6. The final court of appeal remains the Supreme Court that decides the fate of any disputed legal issue requiring interpretation of law. If Tax Appellate Tribunal is established, there will be drastic reduction in litigation.

Without any iota of doubt, the four-tier appellate tax structure discussed above has become out-dated, ineffective and fraught with innumerable encumbrances. Replacement of the entire system as suggested above, in line with prevailing judicial remedies in other departments of the government, is the only way out. To quote an example, one can easily refer to the Civil Services Act of 1973 under which government employees can approach the Services Tribunal to settle all the disputes pertaining to their service matters. Appeal against any order of the Services Tribunal lies directly to the Supreme Court. This should also be the case for tax matters. First appeal should be directly to Tribunal, and for final adjudication the matter should be put before the Supreme Court. If the two-tier tax appellate system is implemented, the following benefits and advantages will emerge:

- Appeal Commissioners will be relieved of passing biased judgements and worrying about the future of their careers.

- Existing Tax Tribunals after their conversion into National Tax Tribunal and selection of members by the Supreme Court will be better equipped to give quality and speedy decisions.
- The High Courts would be relieved of the continuously rising number of tax cases that remain undecided for many years because of the huge backlog of other civil/criminal cases and non-availability of specialised tax judges.
- Very few tax cases would go to the apex court where leave to appeal is granted in which important issues of legal interpretation are involved.

### c. Draft for National Tax Tribunal

Like all other judicial institutions, the tax appellate system should be independent in the true sense of the word. The apex court of Pakistan has elaborated this principle in *Government of Baluchistan v Azizullah Memon* PLD 1993 SC 31 by holding that **“separation of judiciary from executive is the cornerstone of independence of judiciary.”** This should be equally applicable to tax appellate system. In order to implement it, a proposed draft for National Tax Appellate Tribunal is given at Appendix D that may be tabled in the parliament for approval from both the houses.

1. If we want fair and optimum collection of taxes, without hampering growth, then it is imperative to abolish the existing set of complex tax laws and enact new ones based on simple flat rate taxation.
2. Collection of taxes through a single national authority is the need of the hour.
3. There is a need to establish a Tax Intelligence System that sends quarterly information to potential taxpayers about their economic activities, so they can be informed in advance as to how their incomes and expenditure should finally look like in their tax declarations.
4. Prudent spending of public money through a transparent process is critical to ensure that the collection agency enjoys the confidence of the people.
5. Narrow tax base is one of the core challenges faced by the revenue organizations at federal and provincial level. There is a marked decrease in number of income tax filers during the last 5-6 years. In 2006, the number was as 2.1 million<sup>3</sup> that decreased to 1.1 million as of April 2, 2015 as per active taxpayers' list on website of FBR. The system even after imposing 58 types of withholding taxes has failed to capture persons paying substantial amounts as adjustable withholding income tax with telephones, electricity and cash withdrawals etc. The higher rates of tax and unnecessary withholding taxes have failed to yield the desired results. As suggested in this paper a wide tax base with low tax rates is much efficient than a narrow tax base with high tax rates. A large tax base with low rates automatically reduces the tax evasion, whereas, high tax rates lead to tax evasion.

---

<sup>3</sup> *The Role of Taxation in Pakistan's Revival* edited by Jorge Martinez-Vazquez and Musharraf Rasool Cyan, Oxford University Press, Karachi, 2015 [page 673 and Table 36 at page 676].

6. There are about 1.5 million wholesale & retail establishments in the country, but only a small segment (less than 5%) is registered as sales tax payers. Moreover the actual tax filers are only 2 percent of the overall base of the wholesale & retail sector. Wholesale & retail sector is the largest sector in respect of establishments in the country; if it pays its due taxes, it would be an immense support to the national exchequer and would enable the tax/GDP ratio reach a reasonable level<sup>4</sup>.

7. There are a number of other issues that need proper attention of the policymakers, which include weak enforcement and poor monitoring. A large number of entities remain out of the tax net due to lack of proper documentation. Therefore, devising a system to address the issue of poor documentation should be the top priority. Another grey area is the large number of vendors whose businesses are not formally recorded. Tapping the untapped and unregistered business entities, scattered all over the country, should be given more focus.

8. Provincial authorities responsible for collecting sales tax on services are also facing the problems of effective enforcement. The multiple rates and exemptions are also serious cause of distortions in tax base and tax evasion.

9. The current sales tax regime is imposing unbearable compliance burden on small and medium-sized enterprises, which do not always have the resources necessary to deal with the administrative burdens of compliance.

10. Pakistan needs to learn from experiences of other countries that are successfully administrating harmonised

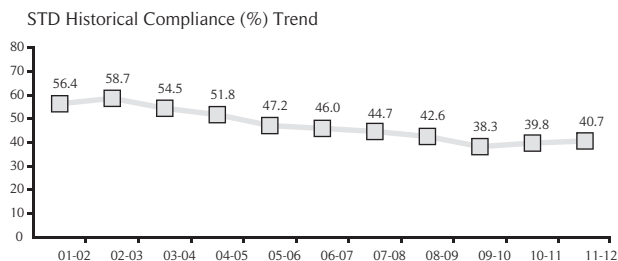
---

<sup>4</sup>Industry Profile: "Wholesale and Retail Trade Sector in Pakistan", Naeem Ahmad, FBR Quarterly Review, October-December, 2012.

## Sales Tax Base & Collection

Non-compliance or low compliance by the taxpayers is one of the major issues faced by the revenue collecting authorities both at federal and provincial levels. For domestic sales tax, the compliance is even lesser compared to income tax filers. During the last 15 years the number of sales tax registrants has increased from 25,000 to around 100,000, but the number of return filers continues to range from 30,000 to 40,000.

**Figure 1: Compliance of Sales Tax Registration**



Source: Industry Profile: “Wholesale and Retail Trade Sector in Pakistan”  
By Naeem Ahmad, FBR Quarterly Review, October-December, 2012.

For the last many years, there are only 10 revenue spinners that contribute nearly 80 percent of sales tax (domestic)<sup>5</sup> collection. According to FBR’s own admission in its Year Book 2013-2014, “the sales tax is the top revenue generating source of federal tax receipts. It constitutes 44 percent of the total net revenue collection. The gross and net sales tax collection during 2013-2014 was Rs. 1,034.5 billion and Rs. 1,002.1 billion showing growths of 18.6 percent and 18.9 percent respectively over the collection of previous financial year.

This performance, by FBR’s own admission, “could be attributable to the increased tax rate of sales tax from 16% in 2012-13 to 17 % in 2013-14<sup>6</sup>.” This exposes the claim of wonderful achievement of growth in sales taxes. In 2013-14, the share of POL in sales tax (domestic) was 45.6 percent. This narrow and punctured sales tax base is evident from figures below that show trends from fiscal year 2008-09 to 2013-14.

<sup>5</sup> FBR Quarterly Reviews (2010 to 2014)

<sup>6</sup> FBR Year Book 2013-201

The overall collection of sales tax (domestic) depends on the collection of petroleum products as it contributes around 46 percent of total gross collection. The petroleum products have been the top revenue spinner of sales tax domestic. The imports of the country contribute significantly to the exchequer in the form of sales tax. Sales tax on imports contributed around 53 percent of the total sales tax.

**Table A 1: Tax Base: Number of Registrants in Sales Tax (Domestic)**

Years	Retailer	Wholesaler	WRT (Total)	All Others	Total
01-02	1,559	23,553	25,112	115,203	140,315
02-03	1,685	28,084	29,769	123,706	153,475
03-04	1,881	30,553	32,434	130,361	162,795
04-05	2,296	32,510	34,806	138,412	173,218
05-06	3,123	34,666	37,789	147,380	185,169
06-07	4,694	37,111	41,805	155,274	197,079
07-08	5,442	39,680	45,122	162,591	207,713
08-09	6,259	42,783	49,042	170,977	220,019
09-10	7,152	46,503	53,655	178,984	232,639
10-11	7,700	50,313	58,013	186,824	244,837
11-12	8,174	53,314	61,488	193,970	255,458

Source: Computer Centre, Sales Tax, FBR (Quoted in FBR Quarterly Review, October-December, 2012)

**Table A 2: Sales Tax Filers and Compliance Ratio (%)**

No. of Filers			Compliance Ratio (%)			
Years	Retailer	Wholesalers	WRT (Total)	Retailer	Wholesaler	WRT (Total)
01-02	730	13,434	14,164	46.8	57.0	56.4
02-03	807	16,665	17,472	47.9	59.3	58.7
03-04	966	16,718	17,684	51.4	54.7	54.5
04-05	1,238	16,786	18,024	53.9	51.6	51.8
05-06	1,547	16,274	17,821	49.5	46.9	47.2
06-07	2,452	16,779	19,231	52.2	45.2	46.0
07-08	2,818	17,347	20,165	51.8	43.7	44.7
08-09	3,137	17,758	20,895	50.1	41.5	42.6
09-10	3,255	17,288	20,543	45.5	37.2	38.3
10-11	3,655	19,445	23,100	47.5	38.6	39.8
11-12	3,934	21,068	25,002	48.1	39.5	40.7

Source: FBR Quarterly Review, October-December, 2012



Table A 3: Sales Tax (Domestic) Collection by WRT

Years	Retailer	Wholesaler	WRT (Total)	All Others	Total STD
(Rs. Millions)					
01-02	193	1,141	1,334	72,448	73,782
02-03	243	1,530	1,773	87,761	89,534
03-04	341	1,952	2,293	90,999	93,292
04-05	374	1,236	1,611	92,082	93,692
05-06	409	1,218	1,627	121,726	123,353
06-07	589	1,645	2,234	131,253	133,487
07-08	581	1,819	2,399	178,997	181,396
08-09	966	2,250	3,216	244,813	248,029
09-10	1,067	2,458	3,525	265,577	269,102
10-11	1,082	2,937	4,019	320,690	324,709
11-12	1,260	4,289	5,549	368,952	374,501
	As % of WRT	As % of STD	As % of WRT	As % of STD	
01-02	14.4	0.3	85.6	1.5	1.8
02-03	13.7	0.3	86.3	1.7	2.0
03-04	14.9	0.4	85.1	2.1	2.5
04-05	23.2	0.4	76.8	1.3	1.7
05-06	25.2	0.3	74.8	1.0	1.3
06-07	26.4	0.4	73.6	1.2	1.7
07-08	24.2	0.3	75.8	1.0	1.3
08-09	30.0	0.4	70.0	0.9	1.3
09-10	30.3	0.4	69.7	0.9	1.3
10-11	26.9	0.3	73.1	0.9	1.2
11-12	22.7	0.3	77.3	1.1	1.5

Source: Industry Profile: "Wholesale and Retail Trade Sector in Pakistan", Naeem Ahmad, FBR Quarterly Review, October-December, 2012

“It has been noted that wholesale & retail registrants in sales tax department were more than 24 percent of sales tax base, whereas collection was just 1.5 percent in 2011-12. During last ten years, the trend of this mismatch is almost same. The mismatch raises the questions as why the collection is too low despite a large number of registrants and what policy changes, measures and steps have been taken by the department to address the issue?”<sup>7</sup>

**Table A 4: Sales Taxes Gross and Net Revenue Receipts 2012-13 & 2013-14**

Heads	FY 2013-14 (Rs. Millions)		FY 2012-13 (Rs. Millions)		Growth (%)	
	Gross	Net	Gross	Net	Gross	Net
Sales Tax (Imports)	495,351	495,330	429,843	429,831	15.2	15.2
Sales Tax (Domestic)	539,143	506,780	442,372	412,697	21.9	22.8
Total	1,034,494	1,002,110	872,215	842,528	18.6	18.9

Source: FBR Biannual Review (January-June, 2013-14)

**Table A 5: Comparison of Sales Tax Domestic (Net) Collection by Major Commodities During FY: 2013-14 & FY: 2012-13**

Commodities	2013-14 (Rs. Millions)	2012-13 (Rs. Millions)	Growth (%)	Share (%) 2013-14
POL Products	231,003	180,588	27.9	43.8
Natural Gas	31,615	36,821	-14.1	8.9
Fertilizers	24,034	19,939	20.5	4.8
Cement	20,106	11,457	75.5	2.8
Electrical Energy	19,945	10,064	98.2	2.4
Cigarettes	17,672	14,535	21.6	3.5
Aerated Waters/ Beverages	13,536	10,686	26.7	2.6
Sugar	9,189	8,545	7.5	2.1
Tea	8,352	5,302	57.5	1.3
Food Products	4,931	3,134	57.3	0.8
Sub Total	380,383	301,071	26.3	73.0
Other sectors	126,397	111,626	13.2	27.0
Sales Tax (Domestic) Net	506,780	412,697	22.8	100.0

Source: FBR Data Bank, published in FBR Year Books

<sup>7</sup> Industry Profile: “Wholesale and Retail Trade Sector in Pakistan”, Naeem Ahmad, FBR Quarterly Review, October-December, 2012.

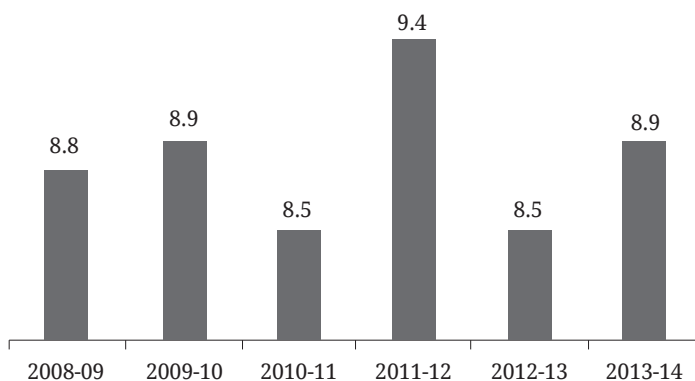
# Tax Collection/Tax Potential

**Table B 1: FBR's Performance (1996-97 to 2014-15)**

Year	Target (Rs. B)	Collection (Rs. B)	Growth in Collection(%)	Target Achieved(%)	Tax to GDP ratio
1996-97	286.0	282.1	5.2	98.6	11.6
1997-98	297.6	293.6	4.1	98.7	11.0
1998-99	308.0	308.5	5.1	100.2	10.5
1999-00	351.7	347.1	12.5	98.7	9.1
2000-01	406.5	392.3	13.0	96.5	9.3
2001-02	414.2	404.1	3.0	97.6	9.1
2002-03	458.9	460.6	14.0	100.4	9.4
2003-04	510	520.8	13.1	102.1	9.2
2004-05	590	590.4	13.4	101.8	9.1
2005-06	690	713.4	20.8	103.4	9.4
2006-07	935	847.2	18.8	90.6	9.8
2007-08	1,000	1008.1	18.9	100.8	9.8
2008-09	1,179	1157.0	14.8	98.1	8.9
2009-10	1,380	1327.4	14.7	96.1	8.9
2010-11	1,667	1587.0	19.6	95.2	8.5
2011-12	1952.3	1883.0	18.2	96.5	9.4
2012-13	2007	1939.4	03.0	96.6	8.5
2013-14	2475	2254.5	14.0	91.0	8.9
2014-15	2605 <sup>8</sup> (original target was 2810)	2580.0 (still not verified officially)	13.0	99.0	9.8 (GDP as per official version was 27.5 trillion)

Source: FBR Year Books and yearly Economic Surveys of Pakistan

<sup>8</sup> Despite imposing additional taxes of Rs. 360 billion, allegedly blocking over Rs. 220 billion taxpayers' refunds and taking advances of many billions, FBR failed to meet the third-time revised target for fiscal year 2014-15, showing shortfall of Rs. 222 billion vis-à-vis original target of Rs. 2810 billion, which was first reduced to Rs. 2691 billion and then to Rs. 2605 billion—Musical Chairs?: A clean-up job in the FBR on cards, *The Express Tribune*, July 25, 2015.

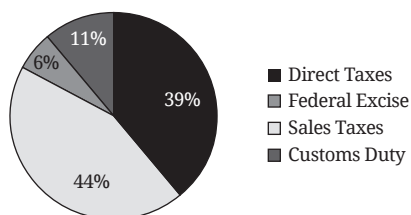
**Figure 2: Tax to GDP Ratio Pakistan**

Source: FBR Biannual Review (January-June, 2013-14)

**Table B 2: Comparison of Collection vis-a-vis Target 2013-14**

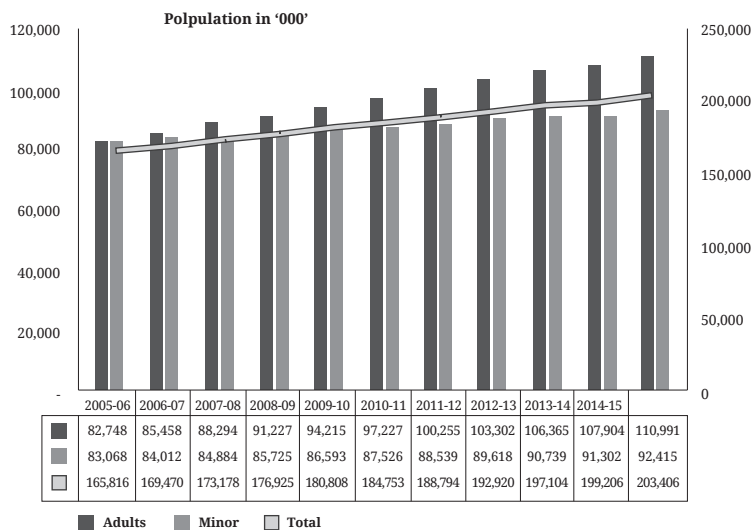
Tax Head	Original Target (Rs. Billions)	Revised Target (Rs. Billions)	Provisional Collection (*)	Achievement of Target (%)	
				Original	Revised
Direct Taxes	975	891	884.1	90.7	99.2
Sales Tax	1,054.1	1,005	1,002.1	95.1	99.7
Federal Excise	166.9	138	139.1	83.3	100.8
Customs duty	279	241	241	86.4	100.0
All Taxes	2,475	2,275	2,266.3	91.6	99.6

Source: FBR Biannual Review (January-June, 2013-14)

**Figure 3: Tax-wise Share (%) in Collection FY 2013-14**

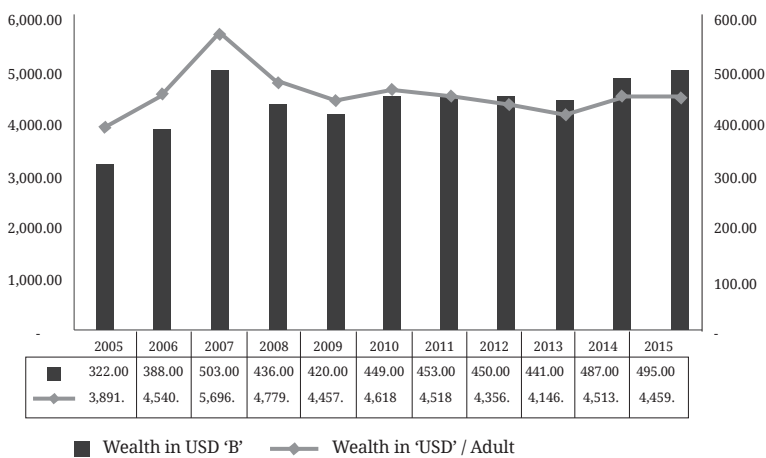
Source: FBR Year Books and yearly Economic Surveys of Pakistan

Figure 4: Population Distribution Over-time



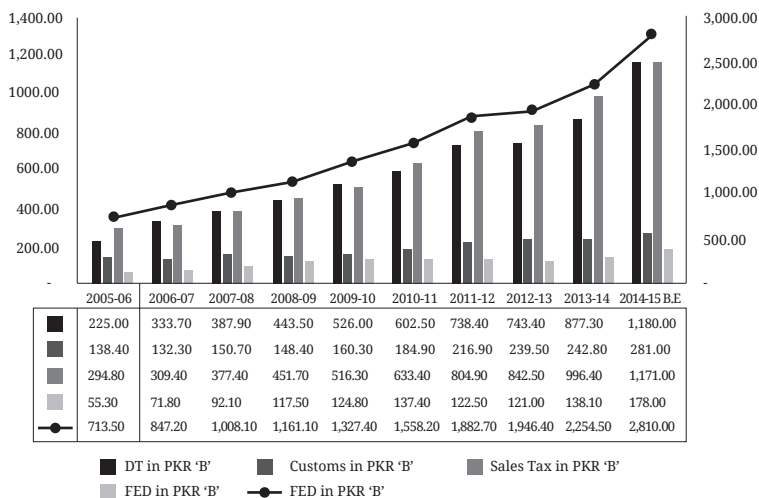
Source: Yearly Economic Surveys of Pakistan

Figure 5: Wealth Analysis



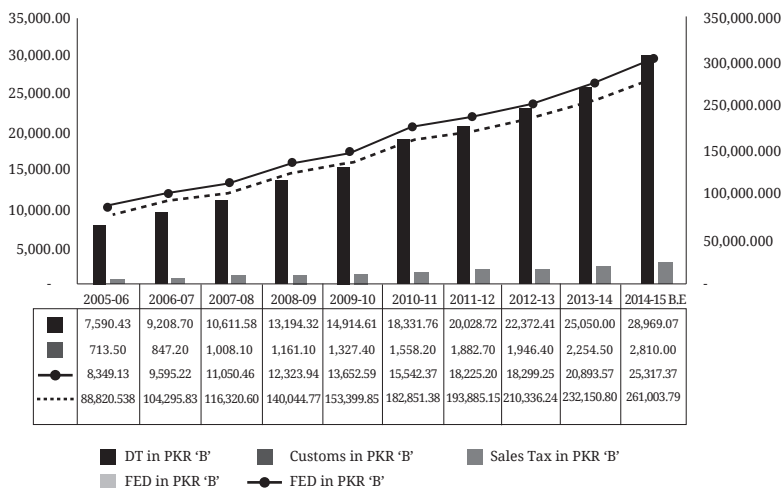
Source: Yearly Economic Surveys of Pakistan

Figure 6: Tax Analysis



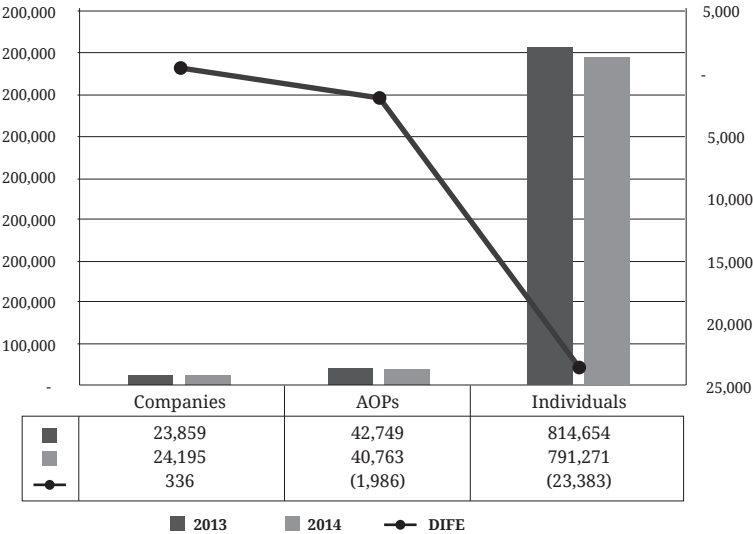
Source: FBR Year Books and yearly Economic Surveys of Pakistan

Figure 7: GDP and Tax Analysis



Source: FBR Year Books and yearly Economic Surveys of Pakistan

Figure 8: Return Analysis



Source: FBR Year Books

# Blueprint of HST

## CANADIAN PERSPECTIVE

### Introduction

The goods and services tax (GST) is a tax that applies to the supply of most goods and services in Canada<sup>9</sup>. These goods and services also include real property and intangible personal property. In Canada, generally, the harmonized sales tax (HST) applies to the same base of property and services as GST. HST is imposed in provinces that have harmonized their provincial sales tax with the GST; these provinces are referred to as the “participating provinces”. The participating provinces are New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario and Prince Edward Island. In the remaining provinces and territories, GST is imposed on taxable goods and services. In these provinces, there may also be a provincial sales tax or a retail sales tax in place. In Pakistani scenario as discussed in the paper there is a need to convince Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan to be “participating provinces” in HST as it will be beneficial for the entire federation as well as helping the taxpayers to deal with only one revenue agency. Provinces will get full participation in the tax collection process as part of National Tax Agency (NTA).

### Historic background

“On October 23, 1996, three Atlantic Canada provinces — Newfoundland, Nova Scotia, and New Brunswick — together with the federal government, announced that they would harmonize their respective provincial sales taxes (PST) with the federal Goods and Services Tax (GST). The three PST rates would be equalized and lowered to 8 percent. Furthermore, the three PST tax bases would be converted to the GST valued-added base, and be expanded to include those goods and services exactly covered by the GST.

The tax-collection and tax-compliance mechanisms would be merged such that the federal government would collect the

---

<sup>9</sup> [http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html#wht\\_splls](http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html#wht_splls)



harmonized sales tax (HST). Before the official HST announcement, going back to when the original tax harmonization intentions were made in April 1996, a host of policy discussions among the participating governments, the provincial opposition parties, and the media were held to assess the potential impact of HST on consumer prices. The federal government and the three HST-participating provincial governments claimed that the HST would benefit.

The opposition parties, the media, and many lobby groups stated that the HST would raise consumer prices, similar to the way in which the earlier GST raised consumer prices in 1991. Also, there was the worry that low income households would be disproportionately hurt by the HST — analogous to the earlier debate of how the GST would disproportionately affect low income families. A formal agreement to legislate the HST was officially signed on 23 October 1996. Briefly put, the HST consists of the following:

1. The provincial sales tax bases of the three participating provincial governments will be converted into value-added tax bases, the bases defined to be exactly equivalent to the operative GST tax base.
2. The provincial sales tax rates in operation at the time of the sales tax conversion (12% for Newfoundland; 11% in New Brunswick; and 11% in Nova Scotia) will be reduced to 8 percent for all three provinces, and will be defined as the **“provincial sales tax portion”** of the HST.
3. The participating provinces will no longer apply their provincial sales tax onto the GST, that is, imposing **“a tax upon a tax,”** as was done before the HST was put into effect. In the case of New Brunswick and Nova Scotia, the 11 percent PST applied on the 7 percent GST meant that an extra 0.77 percent tax was collected on taxable goods before the HST was instituted.

4. Businesses would now file one unified HST form (replacing the earlier GST), pay the tax, and receive credits, using the HST rate (instead of the GST rate). In turn, the federal government now collects the HST tax, and rebates the provincial sales tax portion of the HST back to the participating provinces. The participating provinces have closed their respective sales tax collection departments, transferring employees to other areas of work. This was similar to the run-up of the implementation of the GST before 1991, there were many controversies surrounding the HST.

The participating governments agreed to enforce “tax-inclusive pricing” for all goods and services. The total price of commodities, including the total 15 percent HST tax rates, were to be stated on price tickets and advertising. Criticism from retailers, lobby groups, and the media led the senate to amend the original tax-in policy. The federal government passed the amended HST law, whereby retailers and others were given the option of showing tax inclusive and tax-exclusive prices.

Second, in the HST-participating provinces a considerable lobbying effort was launched against the prospect of provincial sales taxation on textbooks, a protest that continued throughout much of 1996. As a result of this protest, when the HST was announced in October 1996, Canada’s then Finance Minister Paul Martin also stated that a full Canada-wide GST rebate would be applied to textbooks, library books, and books purchased by non-profit organizations (Finance Canada 1996a). Similar rebates would be given on the provincial sales tax portion of the GST.

The stated objective of the HST was to further tax harmonization, both vertical and horizontal. Horizontal harmonization takes place when states or provinces in a federation set identical tax bases. In this sense the HST is seen as a limited success since only three provinces comprising only a small part of the national economy took part. Vertical harmonization occurs when — in a situation where multi-level jurisdictions tax the same revenue source — the

lower level jurisdiction sets an identical tax base with the higher level jurisdiction. The HST, with vertical harmonization, needs only one form to be filed, instead of two: PST and GST respectively. This reduction in complexity reduces taxpayer costs (having less paperwork and accounting documentation) and administration costs (the three HST provinces no longer collect the tax).

In the promotional literature on the HST, the federal government stated these objectives. The literature advertised **“a simpler tax system for both consumers and businesses,”** “lower costs and less paperwork” for businesses that will improve their “competitiveness.” Although not specifically an objective of tax harmonization, the value-added feature of the HST was also well promoted. Analogous to the GST, the value-added nature of the provincial sales tax portion means that exporters in the participating provinces (exporters shipping to other provinces as well as to international destinations) could export at more competitive prices, since taxes on all intermediate goods and services would be credited back to the exporting firms.

The belief that businesses would benefit from the HST was generally well accepted at the time of the original announcement. But there is no clear a priori reason, before the HST came into effect, as to why the implementation of the HST in the participating provinces would in fact lower average consumer prices.

In theory, overall consumption prices could either rise or fall for the following reasons. First, since the new HST broadens the overall tax base, consumer prices would rise for those components that are taxed under the GST, but not taxed under the provinces’ PST. Many such components — fuel and electricity, most clothing and footwear, gasoline and diesel fuel, and purchased transportation — typically make up a significant part of the household’s budget.

Second, for many other items already covered by both the old PST and GST before the HST came into being, consumer prices would fall, since the new rate covering the “provincial portion” of the HST falls to 8 percent from a higher old PST rate. These items include snack foods, personal care products, cleaning supplies, electronic products, restaurant meals, and “big ticket” items such as new and used cars, appliances and furniture, among many goods purchased.

It was generally accepted that these effects that raise prices on some products and lower them on others would take place in the short run, immediately as the HST came into effect on 1 April 1997. Furthermore, after the HST came into being, firms at each stage of production paid no effective provincial tax on capital and intermediate goods and services. The move to the HST meant that producer, wholesaler, and retailer costs were lowered on this account, and that the lowering of such costs, through market competition, would take place over time.

Similarly, it was expected that consumers would adjust their purchases to buy less of goods whose prices went up, and more of those goods that became less costly. In other words, a longer run adjustment of consumer prices after the original HST-implementation took place on 1 April 1997. Finally, the federal government agreed to special transfers to the HST-participating governments, to partially compensate for the anticipated shortfall in sales tax revenues.

Most economists support the efficiency arguments for tax harmonization. Yet the failure to bring in the seven non-participating provinces might be the result of the federal government’s insistence on a harmonized, equal sales tax rate. The pre-harmonized sales tax rates among the provinces were so unequal that it was difficult to find unanimous agreement on a uniform tax rate. But perhaps agreement on a harmonized tax base, without a harmonized tax rate, would have been a more achievable goal.

The participating provinces could have agreed on a uniform tax base such as the GST tax base, but then agree to be allowed to set their own tax rates. Such a scheme is analogous to the current personal income tax system. Yet the efficiency gains for having a common tax base, vertical and horizontal, would be retained. The questions of impacts on consumers for such a scheme would still have to be answered, but the ultimate goal of full-fledged sales tax cooperation could be attained”<sup>10</sup>.

As per agreement, HST is collected by the Canada Revenue Agency, which then remits the appropriate amounts to the participating provinces. Studies<sup>11</sup> conducted have been equivocal about the success of HST implementation for the economies of participating provinces and their consumers.

### **Who pays the GST/HST?**

Almost everyone has to pay the GST/HST on purchases of taxable supplies of property and services (other than zero-rated supplies). However, certain persons may not always pay the GST/HST on taxable supplies. These exceptions may be decided to protect certain backward areas.

### **Who charges the GST/HST?**

GST/HST registrants, or businesses required to have a GST/HST registration number, must charge and account for the GST on taxable supplies (other than zero-rated supplies) of goods and services. Where GST/HST registrants make taxable supplies (other than zero-rated supplies) in a participating province, they must charge and account for the HST instead of the GST. GST/HST registrants must meet certain responsibilities. Generally, they must file returns on a regular basis, collect the tax on taxable supplies they make, and remit any resulting net tax owing.

### **What supplies does the GST/HST apply to?**

Most goods and services supplied in or imported are taxable

---

<sup>10</sup> *The Effect of the Harmonized Sales Tax on Consumer Prices in Atlantic Canada*, David Murrell and Weiqiu Yu, Department of Economics University of New Brunswick Fredericton, New Brunswick <http://qed.econ.queensu.ca/pub/cpp/Dec2000/Murrell.pdf>

<sup>11</sup> *ibid*

supplies and are subject to the GST/HST. Some supplies of goods and services are taxable at the rate of 0 percent (zero-rated<sup>12</sup>). GST/HST is charged at a rate of 0 percent on these supplies. Some common examples of zero-rated supplies of property and services are:

- basic groceries such as milk, bread, and vegetables;
- agricultural products such as grain and raw wool;
- prescription drugs and drug-dispensing fees; and
- medical devices such as hearing aids and artificial teeth.

A limited number of goods and services are exempt<sup>13</sup> from GST/HST. This means the GST/HST is not charged. Some common examples of exempt supplies of property and services are:

- most services provided by financial institutions such as arrangements for a loan or mortgage;
- arranging for and issuing insurance policies by insurance companies, agents, and brokers;
- most goods and services provided by charities;
- certain goods and services provided by non-profit organizations, governments, and other public service bodies such as municipal transit services and standard residential services such as water distribution;
- used residential housing;
- long-term residential accommodation (of one month or more), and residential condominium fees;
- most health, medical, and dental services performed by licensed physicians or dentists for medical reasons;

---

<sup>12</sup> <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/glssry-eng.html#zero>

<sup>13</sup> <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/xmptgds-eng.html>

- child-care services (day-care services for less than 24 hours a day) for children 14 years old and younger;

The participating provinces could have agreed on a uniform

- bridge, road, and ferry tolls (ferry tolls are taxed at 0% if the ferry service is to or from a place outside Canada);

- legal aid services;

- many educational services such as:

1. courses from a vocational school that leads to a certificate or a diploma to practice a trade or a vocation, or

2. tutoring services for an individual who takes a course approved for credit by a school authority or the service follows a curriculum designated by a school authority;

3. music lessons;

### **Success in Canada**

The introduction of the HST changed the PST for the participating provinces from a cascading tax system, which has been abandoned by most economies throughout the world to a value added tax like the GST<sup>14</sup>. To help maintain revenue neutrality of total taxes on individuals, the Canadian government and the participating provincial governments have accompanied the change from a cascading tax to a value-add tax with a reduction in income taxes, and instituted direct transfer payments (refundable tax credits) to lower-income groups. The federal government provides a refundable "GST Credit" of up to \$248 per adult and \$130 per child to low income people. Provinces offer similar adjustments, such as Newfoundland and Labrador providing a refundable tax credit of up to \$40 per adult and \$60 for each child.

---

<sup>14</sup> [https://en.wikipedia.org/wiki/Harmonized\\_sales\\_tax](https://en.wikipedia.org/wiki/Harmonized_sales_tax)

## INDIAN PERSPECTIVE

### Introduction

The Goods and Service Tax Bill or GST Bill<sup>15</sup>, proposes a national value added tax to be implemented in India from April 2016. "Goods and Services Tax" would be a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India, to replace taxes levied by the central and state governments.

GST would be levied and collected at each stage of sale or purchase of goods or services based on the input tax credit method<sup>16</sup>. This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity. Taxable goods and services are not distinguished from one another and are taxed at a single rate in a supply chain till the goods or services reach the consumer. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be zero-rated and imports would be levied the same taxes as domestic goods and services adhering to the destination principle. It is appropriate time that Pakistan should also strive for HST as proposed in India.

The adoption of Goods and Services Tax (GST) would be a significant step in the reform of indirect taxation in India. Amalgamating several central and state taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25-30 percent.

---

<sup>15</sup> It is officially known as *The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014*

<sup>16</sup> [https://en.wikipedia.org/wiki/Goods\\_and\\_Services\\_Tax\\_\(India\)\\_Bill](https://en.wikipedia.org/wiki/Goods_and_Services_Tax_(India)_Bill)



“The GST is a very good type of tax. However, for the successful implementation of the same, we must be cautious about a few aspects. Following are some of the factors that must be kept in mind about GST:

1. Firstly, it is really required that all the states implement the GST together and that too at the same rates. Otherwise, it will be really cumbersome for businesses to comply with the provisions of the law. Further, GST will be very advantageous if the rates are same, because in that case taxes will not be a factor in investment location decisions, and people will be able to focus on profitability.
2. For smooth functioning, it is important that the GST clearly sets out the taxable event. Presently, the CENVAT credit rules, and the point of taxation rules are amended/ introduced for this purpose only. However, the rules should be more refined and free from ambiguity.
3. The GST is a destination based tax, not the origin one. In such circumstances, it should be clearly identifiable as to where the goods are going. This shall be difficult in case of services, because it is not easy to identify where a service is provided, thus this should be properly dealt with.
4. More awareness about GST and its advantages have to be made, and professionals like us really have to take the onus to assume this responsibility”<sup>17</sup>.

Pakistan and India are federal states and the introduction of harmonised sales tax requires consensus and concurrent implementation by the federal and provincial governments.

### **Historic Background**

In 2000, the Vajpayee government started discussion on GST by setting up an empowered committee. The committee was

---

<sup>17</sup> <https://www.quora.com/How-will-the-goods-and-services-tax-GST-work-in-India-How-is-it-any-different-than-the-value-added-tax-VAT>

headed by Asim Dasgupta, Finance Minister of Government of West Bengal. It was given the task of designing the GST model and overseeing the IT back-end preparedness for its rollout. It is considered to be a major improvement over the pre-existing central excise duty at the national level and the sales tax system at the state level, the new tax will be a further significant breakthrough and the next logical step towards a comprehensive indirect tax reform in the country.

The Kelkar Task Force on implementation of the FRBM Act, 2003 had pointed out that although the indirect tax policy in India has been steadily progressing in the direction of VAT principle since 1986, the existing system of taxation of goods and services still suffers from many problems and had suggested a comprehensive Goods and Services Tax (GST) based on VAT principle. GST system is targeted to be a simple, transparent and efficient system of indirect taxation as has been adopted by over 130 countries around the world. This involves taxation of goods and services in an integrated manner as the blurring of line of demarcation between goods and services has made separate taxation of goods and services untenable.

The introduction of an Goods and Services Tax (GST) to replace the existing multiple tax structures of centre and state taxes is not only desirable but imperative in the emerging economic environment. Increasingly, services are used or consumed in production and distribution of goods and vice versa. Separate taxation of goods and services often requires splitting of transactions value into value of goods and services for taxation, which leads to greater complexities, administration and compliances costs. The integration of various central and state taxes into a GST system would make it possible to give full credit for inputs taxes collected. GST, being a destination-based consumption tax based on VAT principle, would also greatly help in removing economic distortions caused by present complex tax structure and will help in development of a common national market.

A proposal to introduce a national level Goods and Services Tax by April 1, 2010 was first mooted in the budget speech for the financial year 2006-07. Since the proposal involved reform/ restructuring of not only indirect taxes levied by the centre but also the states, the responsibility of preparing a design and road map for the implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC).

In April, 2008, the EC issued a report titled **"A Model and Roadmap for Goods and Services Tax (GST) in India"** containing broad recommendations about the structure and design of GST. In response to the report, the Department of Revenue made some suggestions to be incorporated in the design and structure of proposed GST. Based on inputs from the centre and the states, the EC released its First Discussion Paper on Goods and Services Tax in India on the 10th of November, 2009 with the objective of generating a debate and obtaining inputs from all stakeholders.

A dual GST module for the country was proposed by the EC. This dual GST model has been accepted by centre. Under this model, GST have two components viz. the central GST to be levied and collected by the centre, and the state GST to be levied and collected by the respective states. Central excise duty, additional excise duty, service tax, and additional duty of customs (equivalent to excise), state VAT, entertainment tax, taxes on lotteries, betting and gambling and entry tax (not levied by local bodies) would be subsumed within GST.

In order to take the GST related work further, a Joint Working Group consisting of officers from central as well as state governments was constituted. This was further trifurcated into three sub-working groups to work separately on draft legislations required for GST, process/forms to be followed in GST regime and IT infrastructure development needed for smooth functioning of proposed GST.

In addition, an Empowered Group for development of IT

Systems required for GST regime had been set up under the chairmanship of Dr. Nandan Nilekani. A draft of the Constitutional Amendment Bill was later prepared and sent to the EC for obtaining views of the states. After the final inputs, the Goods and Service Tax Bill or GST Bill was passed by the Indian Parliament.

## MALAYSIAN PERSPECTIVE

### Introduction

GST is a broad based consumption tax in Malaysia covering all sectors of the economy i.e. all goods and services made in Malaysia including imports except specific goods and services which are categorized under zero rated supply and exempt supply orders as determined by the Minister of Finance and published in the official gazette.

GST is levied on the supply of goods and services at each stage of the supply chain from the supplier up to the retail stage of the distribution. Even though GST is imposed at each level of the supply chain, the tax element does not become part of the cost of the product because GST paid on the business inputs is claimable. Hence, it does not matter how many stages where a particular good and service goes through the supply chain because the input tax incurred at the previous stage is always deducted by the businesses at the next step in the supply chain.

The basic fundamental of GST is its self-policing features which allow the businesses to claim their input tax credit by way of automatic deduction in their accounting system. This eases the administrative procedures on the part of businesses and the government. Thus, the government's delivery system will be further enhanced.

"Over the past few decades, the worldwide trend has been for the introduction of a multi-stage GST system. Today, almost 90 percent of the world's populations live in countries with GST, including China, Indonesia, Thailand, Singapore and India"<sup>18</sup>.

---

<sup>18</sup> [http://gst.customs.gov.my/en/gst/Pages/gst\\_hdw.aspx](http://gst.customs.gov.my/en/gst/Pages/gst_hdw.aspx)

# National Tax Appellate Tribunal Bill, 2016

ACT NO. ---- OF 2016

An Act to provide for the adjudication, by an appellate tribunal, of disputes with respect to all federal tax codes and for matters connected therewith or incidental thereto.

Short title, extent and commencement

## 1. Short title, extent and commencement

**(1)** This Act may be called the National Tax Appellate Tribunal Act, 2016.

**(2)** It extends to the whole of Pakistan.

**(3)** It shall come into force on such date as the Federal Government may, by notification in the Official Gazette, appoint.

## 2. Definitions.

In this Act, unless the context otherwise requires, -- **(a)** "Appellate Tribunal" means the Tax Appellate Tribunal constituted under section 3; **(b)** "appointed day" means the date with effect from which the Appellate Tribunal is established, by notification, under section 3; **(c)** "Bench" means a Bench of the Appellate Tribunal; **(d)** "Board" means the Federal Board of Revenue constituted under the Federal Board of Revenue Act, Act, 2007 (Act No. IV of 2007); **(e)** "federal tax codes" mean the acts annexed at Schedule I to this Act; **(f)** "Member" means a Member of the Appellate Tribunal and includes the President; **(g)** "notification" means a notification published in the Official Gazette; **(h)** "President" means the President of the Appellate Tribunal; **(i)** "prescribed" means prescribed by rules; **(j)** "rules" means rules made under this Act; and **(k)** "Supreme Court" means the Supreme Court of Pakistan as defined in Constitution of Pakistan;

### **3. Establishment of the Appellate Tribunal.**

The Federal Government shall by notification, establish a tax appellate tribunal, to be known as Tax Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Appellate Tribunal by or under this Act.

### **4. Composition of the Appellate Tribunal and Benches thereof.**

(1) The Appellate Tribunal shall consist of a President and such number as the President with the approve of Chief Justice of Pakistan may deem fit, and subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Tribunal may be exercised by Benches thereof.

(2) A Bench shall consist of at least two Members.

(3) Subject to the other provisions of this Act, the Benches of the Appellate Tribunal shall ordinarily sit at Islamabad and at such other places as the President may deem fit.

### **5. Qualifications for appointment as President or Member.**

(1) A person shall not be qualified for appointment as the President unless he-- (a) is, or has been, a Judge of a High Court; or (b) has, for at least two years, held the office of a Member of Appellate Tribunal.

(2) A person shall not be qualified for appointment as a Member unless he-- (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Judicial Service and has held a post of District and Sessions Judge or any equivalent or higher post for at least five years.

### **6. Appointment of President and Members.**

(1) Subject to the provisions of sub-section (2), the President and every Member shall be appointed by the President of Pakistan following the same procedure as is laid down in the Constitution of Islamic republic of Pakistan for appointments of Judges of High Court.

(2) Appointment of a person as the President or a Member shall be made in consultation with a Selection Committee consisting of-- (a) a Chairman who shall be nominated by the Chief Justice of Pakistan; and (b) such other members as may be nominated by the President of Pakistan through gazette notification.

**7. Member to act as President or to discharge his functions in certain circumstances.**

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, such one of the Members as the President, on the advice of Chief Justice of Pakistan, may by notification, authorise in this behalf, shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the President, on the advice of Chief Justice of Pakistan, may by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

**8. Term of office.**

The President or other Member shall hold office as such for a term that is prescribed in the Constitution of Islamic Republic of Pakistan for the Judges of the High Court.

**9. Resignation and removal.**

(1) The President or other Member may, by notice in writing under his hand addressed to the President of Pakistan, resign his office: Provided that the President or other Member shall, unless he is permitted by the President of Pakistan to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The President or any other Member shall not be removed from his office except by an order made by the President of Pakistan on the ground of proved misconduct or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Chief Justice of Pakistan may, by rules, regulate the procedure for the investigation of misconduct or incapacity of the President or other Member referred to in sub-section (2).

#### **10. Salaries and allowances and other terms and conditions of service of President and other Members.**

The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the President and other Members shall be the same as that of Judges of the High Court.

#### **12. Financial and administrative powers of President.**

The President shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules: Provided that the President shall have authority to delegate such of his financial and administrative powers as he may think fit to any Member or officer of the Appellate Tribunal, subject to the condition that the Member or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

#### **13. Staff of the Appellate Tribunal.**

(1) The President shall determine the nature and categories of the officers and other employees required to assist the Appellate Tribunal in the discharge of its functions and provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the President.



**14. Jurisdiction, powers and authority of the Appellate Tribunal.**

Save as otherwise expressly provided in this Act, the Appellate Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable in relation to an appeal against any appealable order mentioned in tax codes contained in Schedule I of this Act.

**16. Power to punish for contempt.**

The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act shall have effect subject to the modifications that-- (a) the references therein to a High Court shall be construed as including a reference to the Appellate Tribunal; (b) the references to the Advocate-General shall be construed, in relation to the Appellate Tribunal, as a reference to the Attorney-General.

**17. Distribution of business amongst the Appellate Tribunal and its Benches.**

(1) Where any Benches of the Appellate Tribunal are constituted, the President may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of the Appellate Tribunal, the decision of the President thereon shall be final.

**18. Appeals to Appellate Tribunal.**

(1) Subject to the other provisions of this Act, every appeal to the Appellate Tribunal under this Act shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the person aggrieved by the decision.

(2) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such decision or order or any part thereof, file within forty-five days of the receipt of the notice a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(3) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (2), if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) Every appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, except in the case of an appeal preferred by the proper officer or a memorandum of cross-objections referred to in sub-section (2), be accompanied by a fee of two hundred rupees.

## **19. Procedure and powers of the Appellate Tribunal.**

(1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Appellate Tribunal shall have power to regulate its own procedure, including the fixing of places and times of its hearing.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery, inspection and production of books of account and other documents;

(c) reviewing its decisions; (d) dismissing an appeal for default or deciding it *ex parte*; and (e) any other matter which may be prescribed.

**20. Deposit, pending appeal, of duty demanded or penalty levied.**

Where in any appeal under this Act, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the federal excise authorities or the customs authorities, as the case may be, or any penalty levied under the Federal Excises Act or the Customs Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied: Provided that where in any particular case, the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interests of revenue.

**21. Right of applicant to take assistance of legal practitioner and Government to appoint representing officers.**

(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Federal Government may authorise one or more legal practitioners or any of its officers to act as presenting officer and any person so authorised by it may present its case with respect to any appeal before the Appellate Tribunal.

**22. Conditions as to making of interim orders.**

Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any

other manner) shall be made on, or in any proceedings relating to, an appeal under this Act unless-- (a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is preferred; and (b) opportunity is given to such party to be heard in the matter: Provided that the Appellate Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the appellant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Appellate Tribunal has continued the operation of the interim order.

**23. Power of President to transfer cases from one Bench to another.**

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the President may transfer any case pending before one Bench, for disposal, to any other Bench.

**24. Procedure for deciding the case where the Members of a Bench differ in opinion.**

If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

**25. Orders of the Appellate Tribunal.**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by any party to the appeal: Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the concerned taxation officer and the other party to the appeal.

**26. Exclusion of jurisdiction of courts, etc.**

On and from the appointed day after deleting section 133 of the Income Tax ordinance, 2001, section 37I of the Sales Tax Act, 1990, section 34A of the Federal Excise Act, 2005 and section 196 of the Customs Act, 1969, no court (except the Supreme Court) shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters in respect of which appeals would lie to the Appellate Tribunal under section 14.

**27. Transfer of pending cases.**

(1) Every suit, appeal or other proceeding pending before any court or other authority or the Income Tax Appellate Tribunal, Customs, Excise and Sales tax Appellate Tribunal, immediately before the appointed day, being a suit, appeal or other proceeding which would have been within the jurisdiction of the Appellate Tribunal, if it had arisen after such day, shall stand transferred on that day to the Appellate Tribunal: Provided that nothing in this sub-section shall apply to any appeal and or reference pending as aforesaid before a High Court.

(2) Where any suit, appeal or other proceeding stands transferred from any court, tribunal or other authority to the Appellate Tribunal under sub-section (1), the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an appeal under section 18 from the stage which was reached before such transfer or from any earlier stage or de novo as the Appellate Tribunal may deem fit.

(3) Any person, who immediately before the appointed day, is an advocate or authorised representative entitled to practice in any court or other authority or Income tax Appellate Tribunal, or the Customs, Excise and Sales tax Appellate Tribunal and was authorised to appear or to act in any proceedings transferred from the said court, other authority or Tribunal to the Appellate Tribunal under this section shall have the right to appear or to act, as the case may be, before the Appellate Tribunal in relation to the said suit, appeal or other proceeding.

**28. Proceedings before the Appellate Tribunal to be judicial proceedings.**

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Pakistan Penal Code (45 of 1860).

**29. Act to have overriding effect.**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

**30. Power to make rules.**

(1) The President of Pakistan may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-- (a) the salaries and allowances and other terms and conditions of service of the President and other Members under section 10; (b) the financial and administrative powers which the President may exercise over the Benches under section 12; (c) the salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 13; (d) the form in which every appeal to the Appellate Tribunal shall be filed and the manner in which such appeal shall be verified under sub-section (4) of section 18; (e) the rules subject to which the Appellate Tribunal shall have power to regulate its own procedure under sub-section (1) of section 19 and the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (e) of sub-section (2) of that section; and (f) any other matter which has to be, or may be, prescribed by rules under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before both of Houses of Parliaments, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both

Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**31. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.



- “33 Frequently Asked Questions about the HST,” in *Harmonized Sales Tax*, ed. Governments of Canada, Nov Scotia, New Brunswick, Newfoundland and Labrador, 1996b.
- Ahmad, Naeem, *Industry Profile: “Wholesale and Retail Trade Sector in Pakistan”*, FBR Quarterly Review, October-December, 2012.
- Bird, R. 1984. “Tax Harmonization and Public Finance: A perspective on Recent Canadian Discussion,” *Canadian Public Policy/Analyse de Politiques* 10(3):253-66.
- “Blanchard Addresses Senate Committee,” Press Release, 4 March. Nova Scotia, 1998.
- “Blanchard: HST Government Is an Excellent Deal for New Brunswick,” Press Release, 23 October, New Brunswick. 1996a.
- Domingue, R. 1991. “The GST and the Provinces: State of Negotiations.” Ottawa: Library of Parliament, Government of Canada.
- “Draft Legislation and Regulations Relating to the GST and HST”. Ottawa: Department of Finance, Canada, 1997. pp. 61-100.
- Gardner, E.S. 1985. “Exponential Smoothing: The State of the Art,” *Journal of Forecasting* 4:1-28.
- Granger, C.W. and P. Newbold, P. 1986. “Forecasting Economic Time Series”. New York: Academic Press.
- “Harmonization of Taxes.” Ottawa: Library of Parliament, Government of Canada. Finance Canada, 1994.
- “Harmonized Sales Tax: Technical Paper”. Ottawa: Supply and Services Canada, Governments of Canada, Nova Scotia, New Brunswick, and Newfoundland and Labrador (1997).
- Laffer, Arthur B. and Moore, Stephen, “Return to Prosperity, how America can regain its economic superpower status”, Threshold Editions, A Division of Simon & Schuster, Inc. New York, 2010.
- Martinez-Vazquez, Jorge and Cyan, Musharraf Rasool, “The Role of Taxation in Pakistan’s Revival”, Oxford University Press, Karachi, 2015.
- Murrell, D. 1996a. “An Update on the Federal Government/Atlantic Provinces Sales Tax Harmonization Agreement: Points of Controversy,” *ACEA Papers and Proceedings* 26:128-34.

- “Sales Tax Harmonization: Detailed Agreements Reached,” Press Release, 23 October, 1996a.
- “Sales Tax Harmonization: What it Means for Consumers and Business,” Press Release, 23 October, 1996b.
- “Tax Harmonization and Its Importance in Canadian Federalism,” in *Fiscal Dimensions of Canadian Federalism*, ed. R. Bird. Toronto: Canadian Tax Foundation, pp. 118-42, (1980).
- “Tax Harmonization in Canada. Ottawa: Conference Board of Canada. Quantitative Micro Software, 1995.
- “The Harmonized Sales Tax in Atlantic Canada: Win, Lose or Draw?” Atlantic Provinces Economic Council (APEC) 1997. Halifax: APEC.
- “The Movement toward Tax Harmonization in Atlantic Canada,” in *Has the Time Come? Perspectives on Cooperation*, ed. M. Mandale and W.J. Milne, 1996b.
- Thirsk, W. R., Irvine, California. Slemrod, J. 1992. “Did the Tax Reform Act of 1986 Simplify Tax Matters,” *Journal of Economic Perspectives* 6(1):45-57.
- “What it Means for Consumers,” in *Harmonized Sales Tax*, ed. Governments of Canada, Nova Scotia, New Brunswick, Newfoundland and Labrador, 1996.

- <sup>i</sup> Country Report 16/2 (January 2016) prepared by Ms. Serhan Cevik (FAD) of International Monetary Fund (IMF)
- <sup>ii</sup> Telecom taxes in Pakistan second highest in the world, *Daily Times*, January 8, 2016
- <sup>iii</sup> In World Bank 'Doing Business 2016' Pakistan's ranking has gone down to 138 from 136
- <sup>iv</sup> Text is available at website of National Assembly: [http://www.na.gov.pk/uploads/documents/1451661513\\_222.pdf](http://www.na.gov.pk/uploads/documents/1451661513_222.pdf)
- <sup>v</sup> Breaking Debt Prison, Huzaima Bukhari & Dr. Ikramul Haq, *The News (Political Economy)*, March 15, 2015—weblink: [http://tns.thenews.com.pk/breaking-debt-prison/#.Vr16GbR94\\_4](http://tns.thenews.com.pk/breaking-debt-prison/#.Vr16GbR94_4)
- <sup>vi</sup> Essential Tax reforms, Huzaima Bukhari & Dr. Ikramul Haq, *Business Recorder*, April 10, 2015
- <sup>vii</sup> Tax & economic justice, Huzaima Bukhari & Dr. Ikramul Haq, *Business Recorder*, May 8, 2015
- <sup>viii</sup> What are taxes for? Huzaima Bukhari & Dr. Ikramul Haq, *Business Recorder*, November 6, 2015
- <sup>ix</sup> Flat-rate taxation: Alternate solution—II, Huzaima Bukhari & Dr. Ikramul Haq, *Business Recorder*, November 22, 2015
- <sup>x</sup> Arthur B. Laffer, *Handbook of Tobacco Taxation: Theory and Practice*, The Laffer Centre at the Pacific Research Institute, 2014.
- <sup>xi</sup> *Return to Prosperity, how America can regain its economic superpower status* by Arthur B. Laffer and Stephen Moore, Threshold Editions, A Division of Simon & Schuster, Inc. New York, 2010, pg. 170
- <sup>xii</sup> *Return to Prosperity, how America can regain its economic superpower status* by Arthur B. Laffer and Stephen Moore, Threshold Editions, A Division of Simon & Schuster, Inc. New York, 2010, pg. 173
- <sup>xiii</sup> *Ibid*
- <sup>xiv</sup> *Ibid*. Dr. Laffer has made a point by observing: "In the realm of economics taxes are negative incentives and government spending entails positive incentives, subject to all the subtleties and intricacies of the general theory of incentives. People attempt to avoid taxed activities—the higher the tax, the greater their attempt to avoid" [Page 174].
- <sup>xv</sup> "A flat rate eliminates much of the inefficiency in a convoluted tax system by broadening the tax base and sharply reducing marginal tax rates. Many of the distortions that exist with the current tax system are minimized. A flat tax rate reduces the collection cost per dollar of tax revenue and eliminates much of the bureaucracy necessary to monitor and enforce numerous taxes. Its adoption leads to a surge in growth and creates a more competitive economy"— *Return to Prosperity, how America can regain its economic superpower status* by Arthur B. Laffer and Stephen Moore, Threshold Editions, A Division of Simon & Schuster, Inc. New York, 2010, pg. 169

<sup>xvi</sup> There is a gradual decrease in the number of income tax filers, though over 50 million Pakistanis are paying advance income tax at source. FBR claims that over 300,000 notices have been issued to non-filers (potential taxpayers) but only about 60,000 filed returns with payment of only about Rs. 450 million. No explanation is given by FBR as to why the number of return filers has decreased from 1,443,414 in 2011 to about 900,000 in 2014. There was a time when FBR used to get over nearly two million returns! Out of registered companies of nearly 67,000, only 24,188 filed returns for tax year 2014. For tax year 2013, total number of companies that filed returns was 25,152. Law requires that every company has to file tax return irrespective of whether it is earning any income or not.

<sup>xvii</sup> The prevailing myth that our tax base is narrow and only 1% of the population pays income tax is totally baseless—the distinction between ‘filers’ and ‘payers’ is ignored, even by those who claim to be experts! The reality is quite the opposite. Over 50 million Pakistanis are subjected to innumerable withholding taxes—both adjustable and non-adjustable. It includes not only total population liable to income tax, but millions of those who have no taxable income. Since millions, having no taxable income, do not file income tax returns/statements, a wrong impression exists that our income tax base is narrow.

<sup>xviii</sup> Economic Survey of Pakistan 2014-15, Chapter, Overview of the Economy [Page 4]. FBR even failed to meet this third time revised target. Net collection (provisional) as per FBR’s Biannual Review (January-June 2014-15), is Rs.2590 billion. On the contrary, the State Bank of Pakistan in its Annual Report (FY 2015) on the State of Economy released on December 11, 2015, mentions that “within tax revenues, FBR taxes were Rs 2,588.2 billion...” It is a fact that even after imposing additional taxes of Rs. 360 billion, allegedly blocking over Rs. 220 billion taxpayers’ refunds and taking advances of many billions, FBR failed to meet the third-time revised target for fiscal year 2014-15 (FY 2015) of Rs. 2605 billion, showing shortfall of Rs. 222 billion vis-à-vis original target of Rs. 2810 billion, which was first reduced to Rs. 2691 billion and then to Rs. 2605 billion.

<sup>xix</sup> Sales tax on goods at time of independence was a provincial subject. In 1948 it was made a federal subject by the Constituent Assembly of Pakistan through the Pakistan General Sales Tax Act, 1948 enacted on 31st March 1948. It was deviation from section 100(1) of the Government of India Act, 1935 providing that provinces will have right to levy taxes on sale of goods and advertisement.

<sup>xx</sup> NFC: vital issues ignored, Daily Times, November 28, 2009

<sup>xxi</sup> Federal Budget FY 15: Tale of fiscal stabilisation, Muhammad Sabir, Business Recorder, September 17, 2014

<sup>xxii</sup> Flat-rate taxation: Alternate solution, Business Recorder, November 20 & 22, 2015

<sup>xxiii</sup> HST is a consumption tax in Canada. It is used in provinces where both the federal goods and services tax (GST) and the regional provincial sales tax (PST) have been combined into a single value added sales tax.

- <sup>xxiv</sup> Case for harmonised sales tax, *The News*, May 28, 2014
- <sup>xxv</sup> FBR's Biannual Review (January-June 2014-15)
- <sup>xxvi</sup> Effective rate is the actual rate that yielded the total collection. For details see <http://www.customstoday.com.pk/effective-rate-of-sales-tax-on-60-major-sectors-stands-at-4pc-fbr/>
- <sup>xxvii</sup> World Bank. *Paying Taxes, the Global Picture* (2012). Presently Pakistan ranked 171 out of 189 countries [2015 survey of World Bank]
- <sup>xxviii</sup> A. Agha and J. Houghton. *Public Finance Management*. p.227.
- <sup>xxix</sup> B. Hassan and T. Sarker. Reformed General Sales tax in Pakistan. *International VAT Monitor* (November/December, 2012).
- <sup>xxx</sup> S. Refaqaat. *Redistributive Impact of GST Tax Reform: Pakistan, 1990–2001*. The *Pakistan Development Review* 44: 4 Part II (Winter 2005) pp. 841–862.
- <sup>xxxi</sup> Introduced in 1990s, the value-added based GST system could not achieve desired results after successive governments created many distortions by giving tax exemptions and concessions to influential lobbies.
- <sup>xxxii</sup> The followers of World Bank's "Ease of Doing Business" report have noted with dismay that paying taxes in Pakistan continues to have a poor rating. The international lender has ranked Pakistan 171 out of 189 countries in its 2015 survey. It takes 594 hours to comply with provisions of lax law (withholding tax compliance time is not included). In India it takes 243 hours for tax compliance.
- <sup>xxxiii</sup> Case for simple sales tax, *The News*, May 28, 2014
- <sup>xxxiv</sup> Track record of FBR shows remote possibility of collecting even Rs. 6 trillion in the next three years to give enough fiscal space both to the Centre and the provinces to come out of the present economic mess, thus providing some relief to the poor as well as trade and industry. Under the given scenario, federation-provinces tax tangle will continue unchecked and further taxation through local governments, when elected, would not serve any useful purpose—there will be no relief to the people, rather tax burden will increase manifold. Pakistan will remain in debt enslavement and more and more people will be pushed below the poverty line. If we want to come out of this crisis, the parliament will have to reconsider the prevailing social contract between federation and the provinces. Provincial autonomy and local self-governance without taxation rights and equitable distribution of income and wealth is meaningless. We cannot overcome perpetual economic and political crises unless the provinces are given true autonomy; ownership of all resources; generation of own revenue and exclusive right to utilise it for the welfare of their denizens.
- <sup>xxxv</sup> M Ziauddin, TRC Report, *Express Tribune*, February 19, 2016.
- <sup>xxxvi</sup> Complex system of valuation exists as section 25 of the Customs Act 1969 though gives sanctity to the actual transactional price but subject to application of numerous rules and regulations. This provides leverage to officials to discard the declared version and assign various values to imported goods.

*Open, Free and Prosperous Pakistan.*



Huzaima Bukhari, Advocate High Court and Visiting Faculty at Lahore University of Management Sciences (LUMS), is author of numerous books and articles on Pakistani tax laws. She is editor of *Taxation* and partner in Huzaima & Ikram, a leading law firm of Pakistan, and Huzaima Ikram & Ijaz, newly established law and audit firm. From 1984 to 2003, she was associated with Civil Services of Pakistan. Since 1987, she has been teaching tax laws at various institutions including government-run training institutes in Lahore. She specialises in the areas of international tax laws, corporate and commercial laws. She is review editor for many publications of Amsterdam-based International Bureau of Fiscal Documentation (IBFD) and contributes regularly to their journals. She is coauthor of *Law & Practice of Income Tax*, *Law & Practice of Sales Tax*, *Law & Practice of Federal Excise*, *Federal Tax Laws of Pakistan*, *Provincial Tax Laws of Pakistan*, *Principles of Income Tax with Glossary*, *Master Tax Guide*, *Income Tax Digest (with judicial analysis)* and *Commentary on Avoidance of Double Taxation Agreements*. She regularly writes columns for Pakistani newspapers and has contributed about 1000 articles on issues of public finance, taxation and economy in various journals, magazines and newspapers at home and abroad.



**Dr. Ikramul Haq**, Advocate Supreme Court, specialises in tax, constitutional, corporate, press and human right laws. He is Chief Editor of Taxation and Visiting Faculty at Lahore University of Management Sciences (LUMS). He established his own law firm in 1996 and is presently chief partner of Huzaima & Ikram, and partner of Huzaima Ikram & Ijaz. He studied journalism, English literature and law. He is Chief Editor of Taxation and Visiting Faculty at Lahore University of Management Sciences (LUMS). He is author of *Pakistan: From Hash to Heroin* and its sequel *Pakistan: Drug-trap to Debt-trap* and *Practical Handbook of Income Tax*. He has also coauthored with Huzaima Bukhari many books that include *Law & Practice of Income Tax*, *Law & Practice of Sales Tax*, *Law & Practice of Federal Excise*, *Federal Tax Laws of Pakistan*, *Provincial Tax Laws of Pakistan*, *Principles of Income Tax with Glossary*, *Master Tax Guide*, *Income Tax Digest (with judicial analysis)* and *Commentary on Avoidance of Double Taxation Agreements*. He regularly writes columns for many Pakistani newspapers and international journals. He has contributed about 1500 articles, columns and papers on a variety of issues of public interest, printed in various journals, magazines and newspapers at home and abroad.





Towards Flat, Low-rate, Broad and Predictable Taxes The study analyses the structural and operational weaknesses of the existing tax system at federal level and suggests alternate solutions in the following areas that require fundamental reforms. This study argues that ‘taxpayers have to deal with multiple tax agencies adding to their cost of doing business’ and ‘the non-existence of tax-related benefits is the most neglected area of our discourse on reforms’. In this regard, this study discusses the existing four-tier tax appellate system and how it has failed to deliver and what alternate system can be adopted.

*“Huzaima Bukhari and Dr. Ikramul Haq have designed a tax reform plan that would dramatically change the structure of taxation in Pakistan by correctly aligning incentives to promote economic growth and voluntary tax compliance. An ideal tax system should consist of the lowest possible tax rate on the broadest possible tax base. Such a system gives people the least incentive to evade, avoid or otherwise not report taxable income. Along with sound money, free trade, spending restraint and minimal regulation, the adoption of these recommendations will launch Pakistan onto a new trajectory of economic growth and prosperity for all.”*

*– Dr. Arthur B. Laffer  
Father of Supply-Side Economics, Creator of “Laffer Curve”*

*“A very pertinent and common sense approach with detailed working has been outlined in this paper for fixing the problems that haunt the present tax collection system that has resulted in fiscal deficit and resultant burgeoning debt burden. An outline of what needs to be done and the logic behind the thought process is present in the details. It is a golden opportunity for the policy makers and especially the political leadership to take lead from this outline and help kick start the longest overdue overhaul of the tax system that can help take this country into the future.”*

*– Dr. Shimail Daud  
Former President Rawalpindi Chamber of Commerce and Industry*