

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD
(ORIGINAL JURISDICTION)

Civil Misc. Application No. .534-K/2013 in S.M.C.16/2011

Application by Syed Adil Gilani, 5C, 2nd Floor Khayaban-e-Ittehad, Phase VIII, DHA,
Karachi

Sub: Civil Misc. Application No. .534-K/2013 in S.M.C.16/2011 Suo Moto action
regarding law and order situation in Karachi-

Recommendations of Syed Adil Gilani on Measures to plug Revenue leakage of FBR

Respectfully Sheweth;

In accordance with the orders given by the Honorable Chief Justice on 29th October 2013, I respectfully submits the Recommendations to curb Tax evasion in FBR, and make the FBR a department of "Zero Tolerance against Corruption", and plug the estimated tax leakage of Rs 2,000 billion per annum.

A-Customs

1. Out sourcing of the valuation of imports, to third party to be adopted.
2. Following recommendations of FTO (Dr. Muhammad Shoaib Suddle) Commission Report of 10 January 2011, on page 68, shall be implemented.

Administrative Measures:

- I. A system audit of PRAL to determine the efficacy of the system.
- II. There should be one stand alone Collectorate dealing exclusively with all transit and transshipment cargo.
- III. Urgent steps to be initiated to strengthen the Intelligence and Investigation Wing of the Customs Department.
- IV. Tools need to be developed for effective monitoring of Customs officials known to be living beyond known means.

Technological Measures

In order to ensure that containers may not be pilfered in Pakistan while in transit to Afghanistan, the following process is recommended:

Risk management of containers

All containers to have security seals with RFID tags, and GPS-enabled capability to monitor content tampering of cargo.

TIP Note: No monopoly shall be allowed by FBR to a single tracking company. Bhatti Commission Report on page 21 has stated that the Committee set-up by the FBR had already concluded vide report dated 02.08.2013 (**Annex-F**) that the services of tracking company hired from the private sector (M/s TPL Trakker Pvt. Ltd.) was not up to the mark and the required benefits of tracking system were not being obtained

1. Transportation of containers

- a. No carrier shall be allowed to transport transit cargo unless it has license of a bonded carrier with valid bank guarantee deposited with customs to cover the risk of pilferage. No monopoly or first right of refusal to be available to any entity doing transportation of transit cargo.
- b. All bonded carriers shall be required to install modern state-of-the-art tracking system on their transport vehicles. In case of HMT, the same requirement shall be fulfilled.
- c. No licensed bonded carrier shall be allowed to transport transit cargo on any vehicle which is not registered with Customs either as his self-owned fleet or as HMT. The registration number of all such vehicles must be available with the system and other than registered vehicles, transit cargo not be allowed to be transported on any other vehicle.

2. En route monitoring

- a. Containers will be effectively monitored en-route, initially through the four check posts that have been set up for the purpose. The check posts will have readers installed for real time monitoring of containers, and transmission of data to Customs central control room.

3. Receipt of containers at border customs-stations

- a. The transport unit on which a container is loaded at Karachi shall take the container to the border station at Chaman or Torkham. No cross stuffing shall be allowed en route except in case of accident or genuine emergency.
- b. When containers are received at the border customs-station, the readers installed there will automatically record its arrival and cross over into Afghanistan. Container will also be automatically photographed and the picture fed into the system as evidence of its crossing over to Afghanistan

Legal Measures

Necessary changes in law and procedural framework to be initiated / effected in order to enhance deterrence against tax evaders and their accomplices.

Midterm Measures

- 1) Instead of two parallel systems, the Customs to establish one standard fully automated customs clearance system for whole of Pakistan.
- 2) The proposal for a separate Board administering Customs duties / management and care of imports / exports is required to be examined in depth. If it is not agreed to, a competent and honest officer may be appointed as deputy chairman of FBR from within the Pakistan Customs Service.

Long Term Measures

Container scanners to be installed at border customs-stations. When declarations are filed, the system will select up to 5% of the containers through a risk management system. The selected containers will be scanned at the ports before departure and the scan image will be transmitted in real time to border customs-stations for comparison purposes.

Following Recommendations of Report of the Task Force on Reform of Tax Administration, 2001, on Page 61 , shall be implemented by FBR.

More energy and resources should therefore be spent on reengineering the environment in which Custom Officials operate. Using IT as a main tool, the goals of the effort should be to attain the following:

- "Full automation of the processes thereby reducing human interventions significantly.
- Repositioning of controls to where they are most effective without obstructing business and trade.
- Provisions of remote lodgment facilities (via a computer network), to enable the public interact with the organization from their offices, removed from face to face interactions.
- Complete paperless and cashless processes.
- Privatisation of certain operations.
- Electronic linkage of all the participating agencies in the system.
- Use of clear and simple rules."

B- Income Tax

1. The Professional are known normally for not paying Income Tax on their real income earned from practice, from non public sector clients.

Architects, Consulting Engineers, Doctors, Lawyers, mostly takes their fees in Cash from private persons, and most of the time even from businessmen/ companies.

FBR should device mechanism to monitor these professional, to collect real tax.

2. Real Estate (Land/houses/shops/flats) are valued at FBR determined collector's rates , which is not even 10% of the real market value. Government levies in registering of the sale, are in range of 3 to 7 % , depending from province to province. Black money is accumulated for the genuine seller , and corruption and tax evaded money is invested in the real estate. This is a state generated black economy system.

The Government levies in registering of the sale shall therefore be reduced to 0.5%-1%. In order to eliminate undervalued sale price of property, FBR shall be allowed to buy the property at the price on which seller is registering the sale. By taking this measure, FBR (WHT) and provincial revenue will increase, and the black money hide out in real estate will be eliminated.

3. CNIC shall be declared as NTN number, and all citizen shall be made to file IT Return, even at zero income. FBR shall facilitate those who can not file IT Returns all over Pakistan. All sale purchase transactions above Rs 10,000 shall be made through cross cheques, and FBR e-portal shall be made effective to register all transactions in Pakistan.

NADRA may be entrusted to prepare software for FBR for this purpose, within a defined period, say 3 months.

4. WHT deducted/paid (at present it is 3.5% to 6%) shall be made final, on all professionals and contractors, suppliers.

5. Law shall be made to declare "tax evasion" as a crime against states, and punishments be awarded by courts within a defined period, say 90 days.

6. FBR declared in 2012 that it has data of 3.8 million, who are not paying income tax, and spending millions of rupee, for which a tax amnesty scheme was proposed, which did not materialize. FBR should collect tax from these 3.8 million tax evaders.

C- Sales Tax

General Sales Tax at FBR level: the major corruption is

- a. Refund of sales tax.
- b. Adjustment of sales tax .

These two are the major source of corruption and sales tax evasion. High rate of sales tax is applicable at each stage, from import custom, raw material sales, various stages of manufacturing, and the finally at retail sales.

AS A POLICY FBR SHOULD ABOLISH ADJUSTMENTS AND REFUND.

As an example at each stage an average 16% sales tax is payable, major share is paid through adjustments of sales tax paid on the previous stage.

The adjustments of sales tax paid at previous stage are allowed this is the major source corruption. Best solution is to finish the concept of adjustments/ refund by imposing nominal rate of sales tax at each every stage without any adjust /refund from previous stage. This will reduce corruption to minimal levels as 0.5- 1.5% sales tax at every step will have no incentive for sales tax evasion .

The concept of "flying invoices" and "adjustment/ refund " will become non attractive. This system must be imposed both for industry and importers.

If FBR makes irrevocable policy of NO REFUNDS NO ADJUSTMENTS total GST leakages by frauds/ evasions, will be stopped.

TIP proposal on How to Collect GST and WHT on Pre Paid Card

Prepaid card of cellular phone and provider of internet and cordless phone.

Since GST and WHT is a tax/credit on behalf of user, it is not on the supply of a prep paid card, but rather the underlying goods or services to which it carries an entitlement that should be taxed.

The taxable amount for the supply of goods or services should be the sum paid by the final purchaser using the pre paid card.

For certainty and simplicity, the GST is to be collected on face value of the pre paid card, which is in principle the presumptive taxable amount of the services.

The redeemer of the pre paid card whether or not he has the issued it, should be the person liable to, pay GST and WHT. However, as all the Cellular Phone Companies and Internet Provider Companies, sell the pre paid card on cash to their authorized dealers/agents {at this stage they must charge GST and withhold tax}. It will be much easier to collect tax at this stage.

Thus the FBR Revenue, GST and WHT is collected by the Cellular Phone Companies and the Internet Provider Companies at the time of sale, which needs to be deposited immediately in the FBR Accounts.

The procedure of uploading " balance in cell phone account" at present is through (a) Pre paid Cards, (b) payment at the Agents outlets and (c) through internet transfer of money in the cell phone account/interest account.

New Procedure for Tax Collection Recommended are,

1. Payment through Pre Paid Cards shall be the only mode [even if dealers get such cards from companies, it should be the responsibility of the Service Provider to collect and deposit tax]

2.. The Pre Paid Cards shall be printed only at the Pakistan Security Printing Corporation

PVT Ltd (PSPC).

3. Top up shall also be made through pre paid card, sold to cell companies agents, shopkeepers.

4. Cellular Phone Companies and Internet Provider Companies shall place orders , (with payment of the PSPC charges) of printing with PSPC for provide/print/supply of prep paid cards of various denominators , with printed matter to be provide the respective companies.

5. Pakistan Security Printing Corporation PVT Ltd will print the Pre Paid Cards, with " 15% WHT and 19.5% GST Paid" on each card.

5. Cellular Phone Companies and Internet Provider Companies will deposit the total amount of GST and WTH in FBR account at NBP, and provide the paid voucher, certified by FBR through PRAL System, to PSPC and collect the pre paid cards.

6. As GST on services is a provincial tax, Cards will be printed separately with name of province/federal territory for sale in Punjab, Sindh, KPK, Baluchistan and Federal territory. This will enable transferring GST to the respective provinces collected by FBR.

Note: The printing of Pre Paid Cards suggested only at the Pakistan Security Printing Corporation PVT Ltd, due to security reasons, to eliminate fraudulent duplication of Pre Paid Cards . In fact security level provided for Currency notes printing is required to eliminate possibility of duplicate cards.

D- Judiciary to facilitate FBR in its revenue recovery.

It was reported in January 2013 that while total stuck-up amount of the Federal Board of Revenue (FBR) in 351 cases stood at Rs225 billion in different courts including the Supreme Court, high courts and tribunals of the country .

Measures recommended.

- a. In case of appeal, litigation against FBR assessments , National Saving Certificates shall be deposited by the litigant, in the court.
- b. In case the court overturns the FBR assessment, strict administrative action shall be taken against the officer of FBR for imposing wrong tax. This step will eliminate the harassment (for taking bribe) alleged to be the main purpose of making the false assessments by FBR officers.
- c. In case for custom dues, any party does not pay the taxes, nor make any appeal, the imported goods shall be auctioned within 1 week time , after expiry of the allowed period to pay .
- d. In case of any FBR tax defaults, courts shall announce judgments within 90 days.

TI Pakistan is striving to have Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Yours obediently,



Syed Adnan Gilani,
Adviser

Transparency International Pakistan

30th October, 2013