**Government of Pakistan**

**E-Commerce Policy Framework**



**Report on Taxation& Cross-Border Transactions**

**Compiled & Consolidated by:**

**Ministry of Commerce**

**(WTO Wing)**

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**PART – I**

**Background**

As per the Ministry of Commerce notification dated 13-07-2017, the Working Group on Taxation was re-constituted as follows:

1. Member (Inland Revenue – Policy), Federal Board of Revenue;
2. Joint Director (Payment Systems Department), State Bank of Pakistan;
3. Director (IT), Ministry of Information Technology & Telecommunications;
4. Section Officer (AG), Ministry of Commerce;
5. Representative of Punjab Revenue Authority;
6. Representative of Sindh Revenue Board;
7. Representative of Khyber Pakhtunkhwa Revenue Authority;
8. Representative of Balochistan Revenue Authority;
9. Representative of Inland Revenue, Gilgit-Baltistan;
10. Representative of Azad Jammu & Kashmir Board of Revenue;
11. Chief Executive Officer, Food Panda & Eatoye;
12. Chief Executive Officer, TCS ECOM (Pvt.) Lmited; and
13. Chief Executive Officer, Daraz.pk.

2. All Working Groups, except the Working Group on Taxation, held several meetings and shared their respective draft reports with the Ministry of Commerce. Despite holding two national seminars on the subject involving members of all Working Groups on 24-25 April, 2017 and 16-17 August, 2017, the draft report of the Working Group on Taxation was not forthcoming from the Chair of the Working Group, i.e. the Federal Board of Revenue.Therefore, in order to meet the deadlines given by the E-Commerce Policy Board and the Prime Minister’s Office, Ministry of Commerce, after the national workshop held on 16-17 August, 2017, requested all the stakeholders, including the members of the Working Group on Taxation, to share their comments on the private sector proposals on the taxation and customs regime for e-Commerce so that it may consolidate them. Therefore, the current report is a compilation of private sector proposals on taxation and customs regime for e-Commerce and comments thereon from various stakeholders, including the revenue authorities in Pakistan. It must be noted that only Federal Board of Revenue and Sindh Revenue Board shared their comments in time, while other revenue authorities responded only after reminders – in one case as late as 15November, 2017 – thus severely hampering the compilation of this report.

3. The decision to assign different aspects of the proposed e-Commerce Policy Framework to specialised Working Groups, consisting of and chaired by the most relevant stakeholders and experts in their respective areas of work, was made in the spirit ofexpediting and securing the best quality work, reports and recommendations from the respective Working Groups. However, in the case of the Working Group on Taxation, the same has been the biggest casualty, as the revenue authorities have not been able to sit together among themselves and the private sector, and produce a report that would be a specialised piece of paper on the subject. In such a scenario, Ministry of Commerce, certainly not a specialist in the subject of taxation, has put in its best efforts to compile and consolidate the views of different stakeholdersand make recommendations relevant to the subject.

**PART – II**

**Private Sector Proposals on Taxation Regime & Comments Thereon**

4. The private sector was requested to suggest their proposals on the taxation regime with regard to e-Commerce. A consolidated proposal on behalf of the private sector was shared by M/s. Daraz.pk (**Annex-I**). As stated above, since Ministry of Commerce did not receive a consolidated report from the Working Group on Taxation, it made the private sector proposals a basis for discussion and requested all stakeholders, especially all the revenue authorities in Pakistan, to share their comments thereon, failing which it will be presumed that they agree with the same. Therefore, this part of the report consists of a summary of the private sector proposals on taxation regime and the comments received from the respective revenue authorities.

**II.1. Introduction**

5. The private sector highlighted that there e-Commerce business can broadly be divided in two types of business models, i.e. Online Market Place model and the Retail model. As per the private sector report, an Online Marketplace is an information technology platform run by an e-commerce entity over an electronic network that acts as a facilitator in transactions that occur between a buyer and a seller. Facilitation services of an Online Marketplace may include warehousing and logistics, marketing services, customer service, payment aggregation, after sales services and other services. Examples of such models in Pakistan are daraz.pk and yayvo.com amongst others. The Retail model, on the other hand, is one in which a manufacturer, distributor, retailer or service provider uses a self-owned website to sell its owned products. Examples include websites of various famous clothing brands such as Gul Ahmed, Ego, Khaadi etc. The private sector further clarified that services provided by an Online Marketplace are subject to provincial taxes specifically and therefore the scope of their proposals is limited to Online Marketplaces.

**II.2. Private Sector Proposals**

6. The private sector has put forward the following four major proposals:

# Sales Tax Exemption for 10years

# Harmonizing conflicting provinciallaws

# Withholding tax exemption for salestax

# Prior period statute oflimitations

# 7. A summary / rationale of these proposals (including their sub-proposals) shared by the private sector is reproduced below.

|  |  |  |
| --- | --- | --- |
| **No.** | **Issues** | **Recommendations** |
| A | High tax rates make ecommerce marketplaces non-sustainable considering the significant level of investment required on education within the Pakistani environment | Exempt Ecommerce industry from sales tax for 10 years (Example: Bangladesh)* When reinstated, subsidize sales tax on this sector to5%
 |
| B | Conflicting provincial laws result in high cost of compliance and interpretation inconsistencies resulting in varying application of tax laws, potential double tax applicable to one transaction, a single transaction across provinces that can potentially result in businesses responding to a series of notices and undergoing audits in extremecases | 1. Tax jurisdiction to be based on the destination principle i.e. location where seller of product or service on the platform isregistered
2. A single rate to be applicable for sales tax purposes on this sector across all jurisdictions to minimize cost ofcompliance
3. Home province to be primary facilitator for all tax related matters (ensuring a holistic view of the business) rangingfrom
	* Ensuring businesses operating within its borders are registered andcompliant
	* Redistributing GST submitted to it by businesses that belongs to other provincesbasedondestinationprinciple
	* Being the primary contact for all cross province related queries and / or in extreme circumstancesaudits
 |
| C | Withholding taxes are applied to capture businesses within the tax net and its application is difficult when the flow of funds is reversed (i.e. payment for an expense is deducted from funds already owed to the service consumer) | Registered online marketplaces to be exempt from withholding tax requirements* Full sales tax balance required to be submitted by filers on a monthlybasis
 |
| D | Prior period statute of limitations on provincial taxation jurisdiction (and related rate application) to expire for registered online marketplaces | Registered online marketplaces should be discharged from prior period queries or audit requests related to jurisdiction selected for sales tax payments (and related rate disparity) |

**II.3. Comments from Revenue Authorities**

8. The comments received from the revenue authorities in Pakistan on the private sector proposals are placed at **Annex-II** to **Annex-VII**, which may my thoroughly read for detailed understanding of their views. A summary providing a gist of the comments is presented below.

|  |  |
| --- | --- |
| **Proposal** | **Comments From** |
| **FBR** | **SRB**  | **KPRA** | **BRA** | **AJK-BoR** | **GB-IR** | **PRA** |
| Sales Tax Exemption for 10years  | Not supported, however, exemption may be provided to the extent of ICT for facilitating exports through legal amendments  | Not supported  | Not supported  | Not supported | Not supported, however, may be aligned with FBR’s policy for ICT  | Not supported | Not supported |
| Harmonizing conflicting provinciallaws  | Supported with caution  | Not supported  | Destination-based and uniform sales tax rate supported with conditions  | Destination-based and uniform sales tax rate supported with conditions  | May be aligned with FBR’s policy for ICT  | Destination-based and uniform sales tax rate supported with conditions | Consump-tion-based at the rate applicable in consump-tion jurisdiction |
| C. Withholding tax exemption for salestax  | WHT not applicable to e-Commerce entities | Not supported  | Not supported generally, however, FBR may comment with regard to Income Tax liability  | Sales Tax Special Procedure Rules, 2007 to be followed for all taxable transactio-ns | May be aligned with FBR’s policy for ICT  | Not practicable, hence, not supported  | Punjab Sales Tax on Services (Withhold-ing) Rules, 2015 applicable |
| D. Prior period statute oflimitations  | ---  | Not supported  | Does not pertain to KPRA, as no notice issued  | Not supported  | Not supported  | Statutory limitations may be extended by the e-Commerce policy, however, all taxes due must be deposited timely  | Such exemption would be againstlaw and discrimina-tory in nature |

**II.4. Comments from Other Organizations**

9. Among the various private and public sector organizationsinvited to offer comments, the Small and Medium Enterprises Development Authority (SMEDA)and Policy Research Institute of Market Economy (PRIME) shared their views and comments on the private sector proposals, which are appended as **Annex-VIII** and **Annex-IX**, respectively. A summary of their views with regard to the taxation regime for e-Commerce is presented below.

|  |  |
| --- | --- |
| **Proposal** | **Comments From** |
| **SMEDA** | **PRIME**  |
| Sales Tax Exemption for 10years  | 3 years exemption for enterprises falling within the ‘small company’ definition under the Companies Ordinance, 1984  | Supported  |
| Harmonizing conflicting provinciallaws  | Origin-based, uniform sales tax rate on all services delivered online by SMEs  | Destination-based sales tax supported, however, single rate may be difficult as GST on services is a provincial subject  |
| C. Withholding tax exemption for salestax  | --- | --- |
| D. Prior period statute oflimitations  | --- | Supported  |

**PART – III**

**Private Sector Proposals on Cross-Border Transactions & Comments Thereon**

10. The private sector has frequently pointed out problems it encounters with regard to cross-border e-Commerce-related transactions. During the national workshop on 16-17 August, 2017, these problems were discussed with the representatives of the Federal Board of Revenue (Pakistan Customs), and it was agreed that the private sector would share a paper outlining the problems and its recommendations / proposals within the proposed e-Commerce Policy Framework. Accordingly, the private sector presented its paper (**Annex-X**) and the Federal Board of Revenue shared its comments thereon (**Annex-XI**), which may be read for detailed understanding. A Summary of the main issues is presented below.

|  |  |
| --- | --- |
| **Proposals**  | **Comments from FBR**  |
| 1. Set *de minimis* for all personal use shipments valued up to 250 USD to promote cross-border transactions and boost the overall economy by reducing trade barriers | Not supported. However, private e-Commerce sector may conduct an exhaustive exercise by taking Pakistan Customs on board to identify the volume and value range of the incoming imports through post/courier, with future projections to identify a viable *de minimis* duty to arrive at a win-win situation for national revenue as well as e-Commerce marketplace facilitation.  |
| 2. Establish an education forum to train SMEs on how to export their handicrafts and other items through e-commerce platforms | Supported. Pakistan Customs is willing to be part of the training programme for SMEs export through e-commerce by educating them about the working of Customs Computerized Systems / WeBOC.  |
| 3. Make the necessary amendments in the foreign exchange related laws/regulations to simplify the framework for cross-border e-commerce | Although primarily related to SBP, the proposal is not supported, as due to the Harmonised System (HS) being followed, it is not workable.  |
| 4. Allow online marketplaces to seek PTA Type approvals for Electronic Sim based devices on behalf of individual buyers | Pertains to PTA. However, the recommendation is completely silent about the treatment of consignments containing phones in commercial quantity if purchased on line.  |
| 5. Allow re-export of items imported by consumers in order to facilitate customer returns if the product is not as advertised or incorrect  | This would open a Pandora box of return shipments for re-export on one pretext or the other and may be difficult to enforce at customs examination and processing stage. It will also waste time and energy of Customs officers and add undue cost on the Government. However, a mechanism needs to be developed under the WTO’s Trade Facilitation Agreement (TFA), which can be deliberated further.  |
| 6. Launch a pilot project to integrate cross-border transactions of leading e-commerce marketplaces directly with Customs’ WeBOC system to boost exports through e-commerce  | Supported.  |

**PART – IV**

**Key Issues & Recommendations**

11. From the above account of the recommendations of the private sector and the comments from other stakeholders, especially the revenue and customs authorities, a number of key issues can be identified that constitute the basis of the divergence of opinion and views among them. Most of them, if not all, are extremely contentious as neither party seems willing to accept the standpoint of the party having the opposing view. This is not totally unexpected keeping in view and appreciating the fact that the private sector needs to cut costs in this evolving industry while on the other hand the revenue and customs authorities claim that their *raison d’être*is to collect revenue for their respective governments and any laxity in this duty will result in the failure to fulfil this duty. Nonetheless, from the angle of formulation of the e-Commerce Policy Framework, these opposing stances provide an opportunity to understand the nature, gravityand importance of the situation, and to try to find out solutions. Again, it has to be reiterated that Ministry of Commerce is not the best-suited organization to assess the problems and make suggestions, as the Working Group in its original constitution would have been the most relevant body to perform that function. Nevertheless, in the absence of due cooperation from the Working Group, following is an attempt at identifying the key issues and making appropriate recommendations.

**IV.1 Taxation Regime**

# IV.1.1. Sales Tax Exemption for 10Years

# 12. Exemption from sales tax will ease the pressure off the private sector with regard to investment in e-Commerce industry. However, the duration and extent of exemption will eventually have to be either agreed between the private sector and the revenue authorities or mandated at the highest governmental level.

# Recommendation

# 13. The Prime Minister’s Office may direct all the revenue authorities to settle the issue, on a long term basis, with the private sector with consensus within a reasonably short period of time. Since all the deliberations in this behalf have already been facilitated by the Ministry of Commerce, this should not be a difficult or time-consuming exercise.

# 14. As an alternative, it is recommended that sales tax exemptions may be made for the e-Commerce industry in Pakistan for at least 5 years with a reduced rate of 5% thereafter.

# IV.1.2 Harmonizing Conflicting Provincial Laws

# 15. There is merit in the private sector proposal of having a uniform tax rate and principle of taxation (destination-based) and a single revenue authority to deal with all tax-related matters of an e-Commerce entity (with coordination with other authorities for reconciliation of revenue). This will enable the private sector to save unnecessary expenditure on account of compliance with various provincial laws. Sindh Revenue Board is of the view that this proposal is against the principle of provincial autonomy while some others have shown some flexibility (with conditions).

# Recommendation

# 16. Since the matter concerns the formulation of a ‘National’ e-Commerce Policy Framework, which entails transcending provincialism in order to promote and develop a nascent and promising industry, the proposal may be considered as a national proposition. Therefore, the Prime Minister’s Office may direct all the revenue authorities to settle the issue, on a long term basis, with the private sector with consensus within a reasonably short period of time. Since all the deliberations in this behalf have already been facilitated by the Ministry of Commerce, this should not be a difficult or time-consuming exercise.

# 17. As an alternative, it is recommended that a uniform tax rate and destination-based principle of taxation may be applied by all revenue authorities and with a one revenue authority as the primary facilitator for all tax-related matters of an e-Commerce entity, with coordination with other authorities for collection and reconciliation of revenue.Such a mechanism shall be determined and implemented by all the revenue authorities by consultation among themselves within a reasonably short period of time.

# IV.1.3. Withholding Tax Exemption for SalesTax

# 18. Despite best efforts aimed at bringing consensus on this key issue, not only the private sector but also the revenue authorities are poles apart in their views on the issue. Their respective views range from Withholding tax not being applicable to e-Commerce entities, to the application of Sales Tax Special Procedure Rules being applicable, to the proposal being not practicable. Therefore, a proper appreciation and resolution of the issue needs to be made by all concerned in order to address the matter adequately.

# Recommendation

# 19. Since more clarity needs to be brought among the revenue authorities and the private sector, which is not possible without engaging directly in detailed deliberations, rather than sticking to their respective view-points without accommodation, the Prime Minister’s Office may direct all the revenue authorities to settle the issue, on a long term basis, with the private sector with consensus within a reasonably short period of time. Since all the deliberations in this behalf have already been facilitated by the Ministry of Commerce, this should not be a difficult or time-consuming exercise.

# IV.1.4. Prior Period Statute of Limitations

20. This proposal is linked to the application of the mechanism recommended with regard to Key Issue ‘B’. Once the required mechanism is in place for the same, the revenue authorities may, depending on the merit of the proposal and in consultation with the private sector, to address the issue accordingly. Due regard may be had to the principles of taxation, audit, and past liabilities contained in the relevant laws.

# Recommendation

21. Since the matter is of a nature that requires due diligence with regard to principles stated above, a recommendation without going into the technical and legal modalities may be uncalled for. Therefore, the Prime Minister’s Office may direct all the revenue authorities to settle the issue, on a long term basis, with the private sector with consensus within a reasonably short period of time. Since all the deliberations in this behalf have already been facilitated by the Ministry of Commerce, this should not be a difficult or time-consuming exercise.

**IV.2. Cross-Border Transactions**

**IV.2.1. Set *De Minimis* for Personal Use Shipments**

22. The private sector has proposed to set *de minimis* for all personal use shipments valued up to 250 USD to promote cross-border transactions and boost the overall economy by reducing trade barriers. FBR has not supported the proposal, *inter alia*, on the grounds of loss of revenue, under-invoicing, mis-declaration, potential revenue loss on import of luxury items, problems in fixing responsibility in case of violation of import laws, and inconsistency / incompatibility of the proposal with Section 19(C) of the customs Act, 1969.

**Recommendation**

23. As suggested by FBR, the private e-Commerce sector may conduct an exhaustive exercise by taking FBR / Pakistan Customs on board to identify the volume and value range of the incoming imports through post/courier, with future projections to identify a viable *de minimis* duty to arrive at a win-win situation for national revenue as well as e-Commerce facilitation. Accordingly, FBR may invite the private sector to conduct the joint exercise and find a viable solution to the issue.

**IV.2.2. Education Forum for SMEs**

24. The private sector has proposed the establishment of an education forum to train SMEs on how to export their handicrafts and other items through e-Commerce platforms. FBR has supported the proposal.

**Recommendation**

25. FBR / Pakistan Customs to launch a programme of training for SMEs export through e-Commerce by educating them about the working of Customs Computerized Systems / WeBOC.

**IV.2.3. Amendments in the Foreign Exchange Laws / Regulations**

26. The private sector has proposed making necessary amendments in the foreign exchange related laws/regulations to simplify the framework for cross-border e-Commerce. FBR has responded by stating that although the matter primarily relates to the State Bank of Pakistan, the proposal is not supported as unworkable, due to the Harmonised System (HS) being followed.

**Recommendation**

27. Since the matter relates to the subject-matter of the Working Group on Payment Infrastructure, no recommendation is made here.

**IV.2.4. Online Marketplaces to Have Approvals for Electronic SIM-Based Devices**

28. The proposal calls for online marketplaces to be allowed to seek PTA-type approvals for electronic SIM-based devices on behalf of individual buyers. FBR points out that the although the matter pertains to Pakistan Telecommunication Authority (PTA / MoIT&T), still from a Customs point of view, the proposal ignores the treatment of consignments containing phones in commercial quantity, if purchased online.

**Recommendation**

29. Given the possible security-related issues involved in the proposal, PTA / MoIT&T may examine the proposal’s technical and security-relatedviability in consultation with FBR with regard to the treatment of consignments containing phones in commercial quantity, if purchased online.

**IV.2.5. Re-Export of Items to Facilitate Customer Returns**

30. The proposals seeks allowing re-export of items imported by consumers in order to facilitate customer returns if the product is not as advertised or incorrect. FBR suggests that this would a Pandora’s Box of return shipments for re-export on one pretext or another and may be difficult to enforce at customs examination and processing stage, while also wasting time and energy of Customs officials and add undue cost on the Government. However, a mechanism needs to be developed under the WTO’s Trade Facilitation Agreement (TFA), which can be deliberated further.

**Recommendation**

31. The matter may be resolved by more diligence on part of e-Commerce entities while choosing suppliers based on their credibility and quality of products. Also, warehousing models could also in some cases be useful to avoid re-export. However, in order to achieve maximum results from this policy framework, FBR may invite the private sector in an attempt to make a mechanism to accommodate the proposal in order to facilitate them to the maximum extent possible.

**IV.2.6. Pilot Project to Integrate with Customs’ WeBOC**

32. The proposal calls for launching pilot project to integrate cross-border transactions of leading e-Commerce marketplaces directly with Pakistan Customs’ WeBOC system to boost exports through e-Commerce. FBR / Pakistan Customs has supported the proposal.

**Recommendation**

33. The private sector may work with FBR / Pakistan Customs, which may launch the pilot project. However, the project may not be confined to the ‘leading’ e-Commerce marketplaces, but must also take onboard other smaller and budding e-Commerce entities, including online retail stores, if appropriate. Regard may also be had to leading international examples including, but not limited to, the Bank of China working paper, as mentioned in the private sector proposal.

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