

Need for simple tax laws

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In 2001, the General Pervez Musharraf-Shaukat Aziz duo decided to promulgate a new income tax law on the dictates of International Monetary Fund (IMF). The move was opposed by us and many others on the plea that the government lacked legitimacy. It was stressed that enactment of income tax law through a Presidential Ordinance was violative of Article 77 of the Constitution that embodies the well-established principle: no taxation without representation. Ignoring the protest and Constitution, the Musharraf government promulgated the Income Tax Ordinance, 2001, following in the footsteps of Gen Zia-ul-Haq, who promulgated the Income Tax Ordinance, 1979. Tragically, this badly-drafted law has been retained by the three elected parliaments thereafter which confirms apathy of political elite. It is now a challenge for the new government under the leadership of Imran Khan to undo the legacy of Musharraf and enact a simple, fair and growth-conducive income tax law with the support of all parties.

During the Decade of Democracy [2003-2013], the coalition government of Pakistan People's Party and that of Pakistan Muslim League (Nawaz) did not bother to revisit the Income Tax Ordinance, 2001, though the Supreme Court in CIT v Ely Lilly & Others 2009 PTR 23 [Supreme Court] directed as under:

"Since the creation of Pakistan we have not been able to frame any Income Tax Act duly debated in the Assembly. Both the Ordinances were promulgated during the Martial Law Regime otherwise the Constitution has prescribed a four month life of an Ordinance in case the Ordinance is not be placed before the Assembly and it shall be enacted as an Act then the Ordinance will automatically cease to exist. This aspect also reveals that the Constitution has cast duty upon the legislative body to frame the laws within the parameters prescribed under the scheme of the Constitution"....The fact that the Ordinance in question was issued and various amendments were incorporated before and even after the enforcement of the Ordinance 2001 raises the controversy that the Ordinance in question was promulgated without meticulous debate on the subject due to which assesseees and concerned departments were compelled to agitate the issues in different courts."

The Income Tax Ordinance, 2001 is such a badly drafted law that it has been amended over 2000 times during the last 15 years. It has generated enormous litigation and utter confusion (Law & Practice of Income Tax, Volume I, pp 1-15). Since the Parliament and the Federal Board of Revenue (FBR) failed to remove the inbuilt contradictions, revenue worth billions of rupees was lost when Supreme Court held in 2009 PTR 23 [Supreme Court]:

"It appears that the Ordinance was drafted in post haste and the draftsman omitted to incorporate this important provision. This observation is supported from the fact that the Ordinance was subjected to speedy, successive and large-scale amendments, particularly at its very inception." It may be seen that section 238 provided that the Ordinance shall come into force on a date to be appointed by the Federal Government by notification in the official gazette. Accordingly, vide notification (SRO No. 381(I)/2002) dated 16.6.2002, the Ordinance came into force with effect from the first day of July 2002, but with more or less 1000 amendments inserted by the Finance Ordinance, 2002, as calculated by the learned counsel for the respondents.....Had the un-amended provision of subsection (1) of section 239 continued on the statute book, no difficulty would have arisen regarding the treatment of assessment orders passed in respect of the assessment year ending on 30th June 2003. In such eventuality, the assessments up to the said period would have been governed under the repealed Ordinance, while the assessments of the post enforcement period of the Ordinance of 2001 would be governed under the latter Ordinance."

In 2009 PTR 23 [Para 53], the Supreme Court categorically held that "there is a need to review the language, content and scope of the power to amend and further amend an assessment, the power to revise an assessment and the power to rectify mistakes envisaged in these sections so as to make it in line with the legislative intent of consolidating the law relating to income tax so as to make it easily comprehensible to the convenience of the taxpayers." This judgement, passed on 22 June

2009 and binding under Article 189 of the Constitution, has still not been implemented. Resultantly, FBR has failed to enforce tax obligations because of conflicting and confusing provisions of the Income Tax Ordinance, 2001.

It is time that the new coalition government of Pakistan Tehreek-e-Insaf (PTI) constitutes a committee of experts for preparing simple tax laws in Urdu (with translations in Punjabi, Sindhi, Pashto and Balochi). The drafts of new enactments should be made public for debate so that all the stakeholders—tax administrators, trade and professional bodies, taxpayers, tax professionals and public at large—can suggest improvements and highlight shortcomings and deficiencies. The adoption of draft laws after a meaningful public debate can pave the way for consensus reforms leading to better tax collection. After this process, the draft laws should be placed before Standing Committees for scrutiny and approval and then as Bills to be adopted by the Parliament.

While the customs law should offer a low (2%) flat tariff rate, there should be a single digit (8%) harmonised sales tax (HST) on goods and services. For this provinces and federal government can hold parleys in terms of Article 146, 147 and 156(2) of the Constitution of Islamic Republic of Pakistan.

The new income tax law must tax all citizens according to their ability (abolishing all existing presumptive and minimum tax regimes, concessions and exemptions). Taxpayers should be given assurance through Taxpayers' Bill of Rights that taxes collected from them would be spent for public welfare and not for the luxuries of the ruling elites and that their cases shall be adjudicated expeditiously through an independent national tax court. We need to have an income tax law that:

- (a) ensure taxation as provided in Article 3 of the Constitution;
- (b) provide uniformity of tax treatment as far as possible for various categories of taxpayers;
- (c) reduce dependence on excessive indirect taxes;
- (d) force compliance through deterrent provisions and effective fully automated Tax Intelligence System;
- (e) eliminate all kinds of taxation through statutory regulatory orders (SROs);
- (f) minimise tax concessions and exemptions, especially to the rich and mighty;
- (g) establish National Tax Court, working directly under Supreme Court; and
- (h) remove distortions and anomalies to make the law coherent and consistent.

It is an inescapable conclusion that income tax law, as it exists, is the most undesirable piece of legislation. Direct tax system intends to achieve the twin aims of generating revenue as well as utilising the same for achieving socio-economic objectives—both of which remain unfulfilled because of our present oppressive tax system. In fact, the complex regime of incentives and disincentives built into the direct tax law cannot but lead, per se, to difficulties in enforcement and to the opening of opportunities for tax-dodgers/evaders. At the operational levels, this has resulted in undue bureaucratisation, corruption and harassment of the citizens. Undoubtedly, the time has come to resolve these contradictions and to completely revert to classic direct tax regime but by making it simple, low-rate and fair. The new law should aim at generation of resources through lowest-possible rates on the widest-possible base, besides achieving some important economic objectives like promotion of savings, encouragement of new investments and creation of jobs, etc.

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