**Sales tax on goods & services**

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On March 12, 2020, according to Press release of Ministry of Finance, the National Tax Council [NTC] was established and its terms of reference (ToRs) approved. According to a Press report, “The harmonisation of GST is part of the World Bank’s budgetary support loan of US$750 to US$900 million”. It is mentioned in the report that as “suggested by International Monetary Fund (IMF), the centre and provinces have finally agreed to establish NTC “to resolve all tax-related issues, especially for the harmonisation of general sales tax (GST) across the country”. It confirms that our governments do nothing unless lenders/donors force them to do.

It was decided that NTC would have technical level representations from the federation and federating units to resolve tax-related issues without amending the constitution. The NTC has an executive committee, comprising federal finance secretary, Chairman of Federal Board of Revenue (FBR), provincial finance secretaries and heads of the provincial revenue authorities, namely, Punjab Revenue Authority (PRA), Sindh Revenue Board (SRB), Khyber Pakhtunkhwa Revenue Authority (KPRA) and Balochistan Revenue Authority (BRA). The executive committee of NTC is to forward its suggestions/proposals for approval by the NTC. The NTC recommendations will be finalised in terms of majority to be presented before Monitoring Committee of the National Finance Commission (NFC).

In an earlier meeting of the Monitoring Committee of NFC four options were discussed, GST collection on “goods” and “services” by FBR, unified tax collection by an independent agency, collection of taxes on the basis of territory, and GST collection by both federal and provincial government through a harmonised system. “Since the first three options needed constitutional amendments and legislation, the centre and provinces, after due deliberation, principally agreed on the last option of setting up a harmonised GST rate to be applicable across the country”, according to a Press report.

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According to another Press report, the NTC could not become fully functional and reach a consensus before the announcement of federal and provincial budgets for fiscal year 2020-21 and blame was as usual shifted to Covid-19 endemic. Meetings could have been held though video-link platforms. According to a Press report, “IMF suggested that Pakistan should introduce uniform tax rates and a single tax administration instead of two or three tax authorities in each province”. The executive committee of NTC, according to a Press report, in its meeting on December 13, 2020, asked the FBR “to review the revised definitions of &quot;Goods&quot; and &quot;Services&quot; in line with the unanimous definitions agreed among provincial revenue authorities”. It is strange that NTC and its Executive Committee have not taken all the stakeholders on board to seek their point of view and also take input from the legislators, All Pakistan Tax Bar, Federation of Pakistan Chambers of Commerce &amp; Industry and professionals etc.

The taxation of “goods” and “services” is constitutional issue that needs to be taken up by the Parliament rather than by Executive. The meetings of Executive Committee of NTC behind closed doors are just wastage of time as the tax authorities of federal and provincial governments lack the mandate to settle constitutional issues. They have so far not sought any input from relevant standing committees of the national and provincial assemblies. How can they decide constitutional matters?

The members of Executive Committee of NTC lack the mandate to determine taxation rights under Articles 141 and 142 read with Part I &amp; II of the Fourth Schedule to the Constitution. They are not even aware of the latest case law on the issue that is binding on them under Articles 189 and 201 of the Constitution of Islamic Republic of Pakistan [“the Constitution]. The leading cases are: M/s Sui Southern Gas Company Ltd and Others v Federation of Pakistan &amp; Other 2018 SCMR 802, SRB v Civil Aviation Authority of Pakistan 2017 SCMR 1344, XEN Shahpur Division Sargodha and Others v Collector Sales Tax &amp; Others (2016) 114 TAX 1 (S.C. Pakistan), WAPDA v. Collector of Central Excise and Sales Tax (2002 PTD 2077 Supreme Court) and Pakistan International Freight Forwarders Association and others v Province of Sindh and Others (2016) 114 tax 413 (H.C. Kar.).

All the above cases are discussed in detail in the articles, ‘Sales tax on restaurants’, Business Recorder, November 8, 2019, ‘Unconstitutional taxation by provinces’, Business Recorder, January 3, 2020 and ‘A rejoinder’, Business Recorder, January 17, 2020. These articles extensively deal with all the controversial issues between the federal government and provinces and then among the provinces. The possible solutions have also been given in these articles and in Fundamental tax reforms, Daily Times, November 1, 2020 and Modernising &amp; reforming FBR, Daily Times, August 30, 2020. However, the Revenuecracy of Islamic Republic of Pakistan representing FBR, PRA, SRB, KPRA and BOR is least pushed to facilitate the taxpayers. They are more interested to meet their revenue targets, even if it entails violating the command of Constitution.

Entry 49, Part I, Fourth Schedule to the Constitution mandates collection of sales tax on “goods” by the federal government and on “services” by the provinces. The issue is defining in unambiguous terms what constitutes “services” so that there is certainty for taxpayers, federal and provincial tax authorities. The term ‘services’ is not defined in the Constitution or any General Clauses Act (federal of provincials). The expression ‘goods’ is defined in Article 260 of the Constitution to include “all materials, commodities and articles”. Section 2(12) of the Sales Tax Act, 1990 defines the expression “goods” to include “every kind of movable property other than actionable claims, money, stocks, shares and securities”. This is not exhaustive definition.

The definition of “services” under section 2(23) of the Federal Excise Act, 2005 says: “services” means services, facilities and utilities leviable to excise duty under this Act or as specified in the First Schedule read with Chapter 98 of the Pakistan Customs Tariff, including the services, facilities and utilities originating from Pakistan or its tariff area or terminating in Pakistan or its tariff area. The charging of “services” having extraterritorial effect by provinces violates Article 141 of the Constitution. Nobody in NTC has yet raised the issue of taxing ‘composite ‘work contracts’ that are neither “goods” nor “services”. This and all other issues cannot be solved by the representatives of FBR, PRA, SRB, KPRA and BRA. These can only be settled by the Supreme Court of Pakistan under Article 184(1) &amp; (2) that read as under: 184. Original jurisdiction of Supreme Court.-(1) The Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments.

Explanation.-In this clause, “Governments” means the Federal Government and the Provincial Governments. (2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.

The disputes are between or among the governments and all courts, including High Courts, have no jurisdiction to settles these. The governments must approach the Apex Court for a declaratory judgement to provide certainty for all.

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