Tax disputes: FBR rejects cellular companies' proposal

The Federal Board of Revenue (FBR) has rejected a proposal of cellular companies for settling their tax disputes through Alternative Dispute Resolution Committees (ADRCs) to ensure uniform treatment to all taxpayers without creating any discrimination.

This was revealed to the Senate Standing Committee on Information Technology and Telecommunication which met here with Shahi Syed in the chair on Wednesday. The FBR informed that forensic audit of all the four mobile companies would be completed by June 2018.

The FBR has made a tax demand of Rs 287 million against a cellular mobile company for failure to justify short-deduction of tax of Rs 267 million. The cellular companies requested for settling the tax-related matters through ADRCs, instead of the courts; however, the FBR rejected the proposal while saying it is not allowed as per the law.

Director General Withholding FBR, Mehmood Aslam briefed the committee about mechanism/policy being devised in coordination with Pakistan Telecommunication Authority (PTA) on collection of taxes, ie, GST and WHT from cellular operators along with details of taxes collected from telcos so far.

Considering the massive challenge involved in the analysis of millions of transactional data of withholding taxes of massive number of subscribers of each cellular company generated on daily basis, the FBR launched a pilot project for devising an IT-based mechanism for accessing subscribers' withholding transactional data for ensuring effective monitoring of withholding taxes by the telcos.

Under this pilot project, the FBR with the assistance of the Pakistan Revenue Automation (Pvt) Ltd (PRAL/IT Wing) was able to develop a software utility portal. All the four telcos have been required to upload their monthly customers' transactional data, on the prescribed format and requirements. For this purpose, necessary support and assistance is always sought from the PTA.

This pilot project/mechanism has been enabled during the current financial year 2017-18 and all four mobile phone companies are now transmitting/uploading their customers' transactional data on IT/PRAL provided interface every month since July 2017. The aforementioned portal has enabled a more transparent and reliable customers' withholding tax data transmission to the FBR and the position of subscribers' withholding taxes collected by all four cellular companies under Section 236 of the Income Tax Ordinance, 2001.

To start with, the final data earlier uploaded on the IT-based electronic data link by a cellular company was picked up for withholding income tax audit for the months of July to September 2017.The concerned field officers along with IT experts from IT/PRAL (FBR), comprising six members, conducted field-based withholding system audit of consumers' tax deducted and deposited under Section 236 of the Income Tax Ordinance, 2001.

The initial data analysis reflected short deduction of tax of Rs 267 million. Since the taxpayer could not justify the abovementioned non-deduction of tax; therefore, an order has been recently passed u/s 161/205 of the Income Tax Ordinance, 2001 creating a demand of Rs 287 million (including the default surcharge).

In addition to the above, proceedings earlier undertaken under the Income Tax Ordinance, 2001 for short/non-deduction of tax for the tax years 2014, 2015 and 2016 have also been concluded against the said company.

However, the company officials maintained that they are a law-abiding corporate entity and carry out all operations in strict accordance with the local laws and fulfill their obligations while upholding the highest standards of corporate ethics and integrity. The company has contributed immensely to the national exchequer in the form of direct and indirect taxes. Certain territories in the country are tax exempted; therefore, in accordance with the law and as per industry practice; the company has not been deducting tax from these exempted territories.

The company representative further stated that the company received a notice from the FBR on January 04, 2018 over short deposit of withholding tax amounting to Rs 267 million for the period July-September 2017. The company disagreed to the FBR's contention in the aforesaid notice and responded with the verifiable details of tax payments provided during the audit and requested the withdrawal of this notice. The FBR has re-raised the same demand with additional surcharge; however, the company is contesting this demand before the Commissioner Appeals as they can confidently claim to have carried out all statutory fiscal obligations.

Briefing the committee, cellular companies' representatives said that they are facing very high tax rates and detrimental tax regime for telecom sector as well as consumers. There is a need for tax harmonization across provinces and the federation (rates & criteria). Further harsh and incorrect tax assessment by the authorities is resulting in unnecessary litigation and delay in payment to the exchequer. They further said that dispute resolution and rectification is extremely slow and ineffective.

They further said that cellular sector has made a substantial contribution to the society and economy, adding that the sector is amongst the largest contributors to the country's exchequer. It has invested over $15 billion in the economy since deregulation in 2004 and has created over 14,000 direct and hundreds of thousands of indirect jobs.

The sector is recognized as an enabler for the society, bringing greater financial and digital inclusion as well as documentation of economy through mobile communication to 85 percent of country's population. Further the sector's investment stood at $635 million in 2016-17 while FDI inflows were $15 billion during 2004-17.

According to the World Economic Forum, taxation is one of the key challenges of doing business in Pakistan. The World Bank ranks Pakistan 147th out of 190 countries in terms of ease of doing business and FDI figures fell from $4,437 million in 2014 to $1,977 million in 2016; however they increased slightly to $2,480 million in 2017.

The committee expressed concern over 42 percent taxes on Rs 100 mobile card, mostly used by non-filers or poor segment of the society. The committee decided to make legislation on the issue and give exemption of taxes for the people using Rs 200 or Rs 500 per month.

The committee also discussed the issue of installation of e-services software at Capital Development Authority (CDA) by M/s LMK Resources Pakistan Ltd. A deputy director of Federal Investigation Agency (FIA) said that both the sides are not serious in implementing the project. The committee directed CDA, M/s LMK Resources Pakistan Ltd and NITB to start work within two weeks and update the committee in the next meeting in this regard.