



# Legal and Regulatory Review: Professional Tax

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Excise and Taxation Department

## Punjab Government Efficiency Improvement Programme (PGEIP)

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## 1. Review of the Punjab Professional Tax legal regime

### 1.1 Introduction

The Punjab Professional and Trades tax is a flat tax collected from persons engaged in particular trades and professions. Professional tax is not a tax on income and has no nexus with returns from economic activity or for that matter turnovers or volumes. Article 163 of the Constitution specifically empowers the provinces to levy and collect this tax subject to limit, which may be imposed by Parliament in this behalf<sup>1</sup>.

Overlaps with other levies and taxes exist. These include at least two local government taxes - fees for licensing of professions and vocations<sup>2</sup> and local tax on services<sup>3</sup>. In a strictly technical view of the law these taxes, if inconsistent with professional tax or leading to double taxation have precedence. The exact amount of taxes collected under these heads by various Local Governments is not available.

This report reviews gaps in the professional tax regime, its contribution in tax-based revenues in Punjab and changes, which should be made in the tax regime for better and efficient collection of this tax.

### 1.2 Broad overview of the Legal regime

In Punjab the legal basis of the tax is the Punjab Finance Act, 1977. Procedure for assessment and collection of tax is provided in the Punjab Professions and Trade Tax Rules, 1977. Rules place the burden of rendering information about liability on persons subject to taxation. Actual payment of tax is made by both persons subject to liability and by persons paying out salaries (employers). If a person is engaged in rendering more than one type of service he pays professional tax on the service having the highest rate. In Punjab professional and trades tax is imposed on seven broad classes of persons<sup>4</sup>. The tax collection and assessment authority is the District Officer Excise and Taxation, which is a district office of the Directorate General of Excise and Taxation, Punjab.

### 1.3 Professional and Trade related taxes in other provinces and India

Professional tax is also payable in the provinces of Sind<sup>5</sup>, Baluchistan<sup>6</sup> and KPK<sup>7</sup>. The regimes are broadly similar.

A similar tax is also collected in a number of Indian states. The states, which levy this tax, are Andhra Pradesh<sup>8</sup>, Karnataka<sup>9</sup>, Maharashtra<sup>10</sup>, West Bengal<sup>11</sup>, Chhattisgarh<sup>12</sup>, Sikkim<sup>13</sup>, Tamil Nadu<sup>14</sup>, Punjab<sup>15</sup>, Gujarat<sup>16</sup>, Orissa, Rajasthan<sup>17</sup> and Madhya Pradesh<sup>18</sup>. Indian tax collecting statutes have considerable detail as compared to Pakistan statutes.

<sup>1</sup> See Professional Tax(limitation) Act, 1941 for upper limit representative legislation

<sup>2</sup> See Section 116 read with item 1, Schedule 2, Part V, Punjab Local Government Ordinance, 2002,

<sup>3</sup> See Section 116 read with item 1, Schedule 2, Part III and IV,

<sup>4</sup> See Annex A

<sup>5</sup> Sind Finance Act, 1964,

<sup>6</sup> Baluchistan Finance Act, 1977

<sup>7</sup> NWFP Finance Act, 1991 as amended by the Finance Ordinance, 2002

<sup>8</sup> Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987

<sup>9</sup> Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976

<sup>10</sup> See Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1976

<sup>11</sup> West Bengal State Tax on Professions and Trades, Callings and Employments Act, 1979

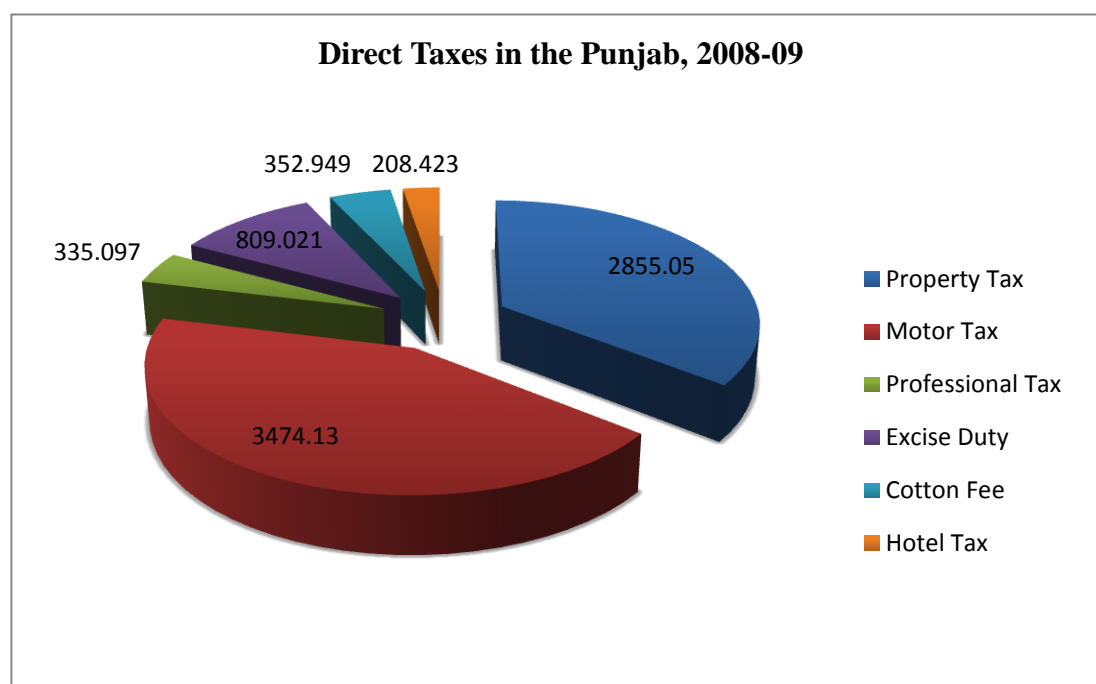
<sup>12</sup> Chhattisgarh Professional Tax Act, 1995

<sup>13</sup> Sikkim Tax on Professions, Trades, Callings and Employments Act, 2006

Most Indian statutes provide for the appointment of a Commissioner of Professional Tax and other officers for collection of professional tax<sup>19</sup>. There is however no requirement to have a dedicated Commissioner of Professional Tax and existing officers can be saddled with professional tax responsibilities. Tribunals appointed under the Sales Tax Act are designated as appellate tribunals in case of professional tax. Indian Statutes also empower the State Governments to entrust collection of professional tax to collecting agents (mostly municipal corporations) and payments to municipal corporations who were collecting this Tax prior to state legislation<sup>20</sup>.

#### 1.4 Share of Professions Tax in direct taxes in Punjab Province

Historically collection of professional tax has not been very high and it usually occupies fifth position in terms of quantum with a percentage share of 4.17% in 2008-09 amongst the direct taxes of the province.



The Collection of the tax has however increased steadily over the past 5 years.

<sup>14</sup> Tamil Nadu Tax on Professions, Trades, Callings and Employments Act, 1992

<sup>15</sup> Punjab Finance Act, 1977

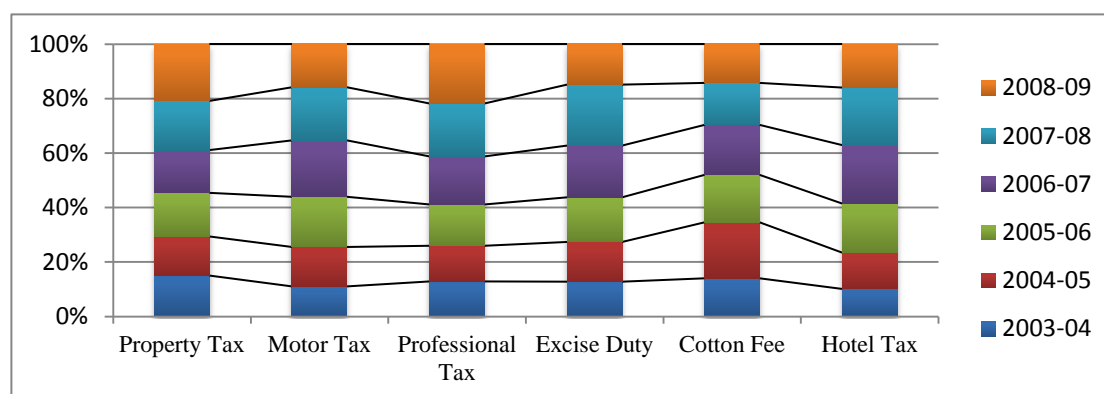
<sup>16</sup> Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976

<sup>17</sup> Rajasthan Tax on Professions, Trades, Callings and Employments Act, 2000

<sup>18</sup> Madhya Pradesh Professional Tax Act, 1995; See [www.tax-india.com](http://www.tax-india.com)

<sup>19</sup> See section 12, Maharashtra Act, 1976

<sup>20</sup> See section 29, Maharashtra Act 1976; Also see Gujarat Professions Tax Act, 1976



### 1.5 Gaps in the regulatory regime

A review of the professional tax regime reveals numerous gaps both in terms of effectiveness and due process. These gaps and lacunae are as follows:

- a) The Tax imposing provisions are extremely brief and do not provide necessary information. In the absence of broad parameters, subordinate legislation becomes difficult to draft and liable to challenge.
- b) The tax imposing statute and the Punjab Professions and Trade Tax Rules, 1977 do not define key terms. For example the term 'lawyer', 'trade', 'engineer', 'money changer' are not defined, which leads to disparate interpretations.
- c) Unlike Indian states, overall responsibility for professional tax across the province is not assigned to any officer.
- d) Tax has been imposed on contractors supplying commodities and services to the Federal and Provincial Governments but no corresponding duty to collect this tax is imposed on the procuring authority<sup>21</sup>.
- e) There is no positive duty to collect professional tax from employers, official authorities, companies and public authorities. Such a duty only becomes operative 'if so directed by the District Officer/Excise and Taxation Officer'<sup>22</sup>.
- f) The Tax regime does not impose any duty on professional registration bodies like the Pakistan Medical and Dental Council, Pakistan Bar council or the Pharmacy council to provide information regarding persons registered with them. Similarly the tax regime does not require the Securities and Exchange Commission of Pakistan or the Punjab Employees Social Security Institution to provide information about entities registered with them.
- g) The legal regime does not provide powers of inspection to assessing officers and/or collect information from other sources.
- h) The legal regime does not impose any duty on the Excise and Taxation department to maintain a searchable database of professional taxpayers,

<sup>21</sup> See Sr. No 5, Second Schedule, Punjab Finance Act, 1977 read with Rule 7, Punjab Professions and Trade Tax Rules, 1977. This rule has however been partially superseded (and possibly without legal authority) by FD Instruction No SO (M-1) 1-1/2000(P-1) Dated 20 -5-2011 which shifts the responsibility of collection on Government departments ( by deduction) in case of default

<sup>22</sup> Rule 7(2), Punjab Professions and Trade Tax Rules, 1977

which limits the ability of the department to exploit this data for purposes of taxation on services.

- i) Selection of classes of persons liable to pay professional and trade tax appears to be based on no clearly discernible criteria with many professions and trades missing like veterinary doctors, cement dealers, fertilizer dealers etc.

### 1.6 Comparative analysis of Professional Tax and UIP Tax regimes

In order to determine lacunae and shortcomings in the professional tax regime within the overall provincial tax collection structure an analysis of the professional tax regime with the provincial Urban Immoveable property tax regime has been undertaken. The analysis reveals the following issues with the PTT taxation structure:

Feature	Urban Immoveable Property Tax	Professions and Trade Tax
Power to enter and inspect the property	√ - Rule 3(2)(a),(b)	No power provided
Power to examine documents in order to determine tax liability	√ - Rule 3(2)(c)	Inspector may require persons liable to produce document – Rule 4(2)
Power to examine persons	√ - Rule 3(2)(d)	No power provided
Delegation of powers of examination/inspection	Rule 4	No delegation specified
Duty on tax officials to maintain and update record and recover tax	Rule 5	Present – Rule 11
Methodology of collection of information and assessment	Rule 6-11	Not present
Powers to collect tax as arrears of Land revenue	Present – Rule 19	Not present
Procedure for service of summonses	Rule 26	Not provided
Provision for appeal and revision	Rule 13	Present- Rule 3 (Appeal however lies to District Officer Excise and Taxation who is also the assessing authority.
Power to appoint special persons for data collection	Rule 14	Not provided
Refund provisions	Present Rule 21	Present – Rule 5
Penalty provisions	Present Rule 28	Not present

## 1.7 Impact of gaps in the Regulatory regime

Gaps in regulatory regime have produced a lax taxation structure. Many classes of persons do not pay any tax at all and the net collection of tax in 2010-11 was Rs. 425 million<sup>23</sup>. It is reported that none of the more than 50,000 registered lawyers in the province pay professional tax. Lack of comprehensive data about persons engaged in provision of services is also likely to adversely affect collection of sales tax on services.

## 1.8 Recommendations

Analysis clearly reveals the changes that should be made in the Professional Tax regime. These changes are as follows:

- Separate legislation should be enacted for the Professions and Trades Tax.
- Pending the creation of a tax collection authority in the Punjab, legislation should entrust overall (province-wide) collection and assessment responsibility to a Commissioner of Professional Tax who may or may not be a dedicated officer. Provision for appointment of Additional Commissioners and Deputy Commissioners (through entrustment to existing officers) should also be made.
- Legislation should provide sufficient powers to taxation officers to collect information especially from professional registration bodies, Securities and Exchange Commission of Pakistan, Punjab Employees Social Security Institution, etc. The possibility of imposing duties on these Institutions to render information should also be considered.
- Legislation should provide for an independent appeals mechanism.
- Legislation should provide for the imposition of penalties for delayed payment of tax/tax evasion.
- Employers and procuring agencies should be saddled with collection and payment responsibilities wherever possible.
- Delegated legislation should be detailed and provide for forms and formats for filing information
- Legislation should impose a duty on the Commissioner of Professional Tax to maintain a searchable database of professionals and persons engaged in taxable trades and callings.
- Overlaps with Local Government Taxes should be removed. In case municipal corporations/District Governments are to be given a share from professional tax proceeds, this should be stated in the Statute.
- Classes of persons liable to pay professional and trade tax should be based on clearly discernible criteria.

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<sup>23</sup> See Punjab Budget documents, Receipts, Excise and Taxation, page 8



## **Annex A: Classes of Persons required to pay Professions and Trade Tax**

1. Companies registered under the Companies Ordinance, 1984
2. Persons other than companies owning factories as defined under the Factories Act, 1932
3. Persons other than companies owning commercial establishments having ten or more employees
4. Persons engaged in the import or export of goods exceeding Rs one lakh
5. Persons engaged in a profession, trade, calling or employment either wholly or partly within the province of Punjab who were assessed to pay income tax
6. Contractors, builders and property dealers who during the preceding financial year supplied to the Federal or Provincial Government or a company or factory or establishment or any autonomous or a semi autonomous organization or any local authority goods or commodities
7. Persons engaged in the following professions/providing the following services
  - a. Medical consultants or specialists/dental surgeons
  - b. Registered medical practitioners
  - c. Others including homeopaths, hakeems and ayurvedics
  - d. Auditing firms
  - e. Management and tax consultants, architects, engineering, technical and scientific consultants
  - f. Lawyers
  - g. Members of Stock Exchanges
  - h. Money changers
  - i. Motorcycle/scooter dealers
  - j. Motor car dealers and real estate agents
  - k. Recruiting agents
  - l. Carriage of goods and passengers by road
  - m. Health clubs and gymnasiums
  - n. Jewelers, departmental stores, electronic goods store, cable operators, printing presses and pesticide dealers
  - o. Tobacco vendors

**Annex B: Collection of Direct Taxes in Punjab Province, 2003-09<sup>24</sup>**

<b>Years</b>	<b>Property Tax</b>	<b>Motor Tax</b>	<b>Professional Tax</b>	<b>Excise Duty</b>	<b>Cotton Fee</b>	<b>Hotel Tax</b>
2003-04	2051.16	2410.95	197.33	692.252	345.948	131.641
2004-05	1961.17	3162.97	200.92	790.874	507.718	173.567
2005-06	2188	4025.76	232.833	888.68	430.495	234.749
2006-07	2146.97	4527.61	270.723	1030.54	453.428	279.551
2007-08	2467.42	4260.33	298.449	1214.2	380.851	275.209
2008-09	2855.05	3474.13	335.097	809.021	352.949	208.423

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<sup>24</sup> Property Tax reform in Punjab, Ijaz Nabi and Hina Sheikh, Lahore University of Management Sciences

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