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# Pakistan's BOP Blues: Demons in the Debit Side—An Elitist Analysis of the Outward Remittance Regime—Bringing the Tax Pincer Back In

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***Abstract***

*The paper seminally develops (in some respects, reinforces) an alternative analytical framework of foreign exchange management in a developing country context in which, along with the standard toolkit of foreign exchange regulations, the tax system also plays a pivotal role. The paper spatially anchors itself in Pakistan to make an attempt to fill the knowledge gap, which, inter alia, emanates from an excessive focus on increasing inward remittances through exports, foreign direct investment, and workers' transfers, and an equal absence of attention on decreasing outward remittances on account of imports, commercial imports, travels, private transfers and insurance. It is argued that outward remittances can be better checked by bringing in the tax pincer to operate on the exit-gate side by side with the foreign exchange regulations. In order to operationalize the proposed mechanism, an elaborate set of cardinal questions are devised that must be answered by the remitting state's institutional network before out-remitting any chunk of foreign exchange—big or small. It follows that no institution of whatever weight, size or strength can answer all of the questions on its own on standalone basis; instead different questions would have to be answered by different institutions (and their underlying enforcement outfits) to achieve desired aggregate outcomes and impact. A suitable theoretical framework is laid out and expanded to develop the concept of rentier state elite who, with ingrained centrifugal economic propensities, constantly try to funnel foreign exchange out of the economy and park it in foreign jurisdictions. It is contended that the rentier state elite keep the foreign exchange policy regime porous and its enforcement outfits incapacitated so as to ensure selective and patchy application of various regulations particularly the foreign exchange rules and tax laws. The dynamic causal mechanisms are traced between the rentier state elite and the systemic aberrations, and are galvanized through empirically-based reasoning culminating into a case study. The tax nexus insufficiency established through critical survey of the tax system and its coupling with the foreign exchange regulations is brought out as the key take-home, which then connects back to Pakistan's perennial BOP blues. The analytical framework developed, it is posited, is generalizable to other similarly-circumstanced national economies that are constantly facing BOP problems.*
*JEL: F24; F31; F32; F38*

***Keywords:*** *Outward remittance regime, balance of payments (BOP), rentier state elite, foreign exchange regulations, foreign exchange management, foreign currency accounts, cardinal questions framework, external sector, Pakistani elites*

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## INTRODUCTION

Historically, the most precarious imbalance that Pakistani economy has braced is in the balance of payments (BOP). Out of the two external sector accounts that underlie the country's BOP equation, that is, current account and capital account, the one with greater weightage, i.e., the current account has traditionally produced annual deficits. Even during the years that the current account produced surpluses, that is, FYs 1950-51, 2001-02, 2002-03, 2003-04, and 2010-11, it was not due to any trade surpluses but due to other ancillary factors, except 1950-51. At

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some level, the strength of a country's economy can singularly be gauged in terms of its ability to produce foreign exchange surplus or reserves (FERs) in the external sector accounts. It follows that the center-piece of Pakistan's economic management—both in political and economic realms—has been a persistent, arduous, and never-ending struggle to maintain FERs from falling below the critical level [1]—generally reckoned in terms of three-month's imports [2]. In spite of Pakistan's single-minded preoccupation with FERs and maintaining the BOP at comfortable levels, its external sector has consistently looked in a disheveled state.

This situation is indicative of an epistemological paradox: against the backdrop of complete volatility around and infirmities in the external sector, the scholarship created to capture that reality is patchy and lacks in construct validity, at least, on two important scores. One, although FERs is a simple function of inflows minus outflows adjusted for change in the opening balance, yet intriguingly, the entire debate in the informed economic, political economy, and public policy circles has so far tended to revolve around the foreign exchange (FE) *inflows* and their *increase* intriguingly ignoring the phenomena of *outflows* and their *decrease*. Two, Pakistan's current account deficit has generally been equated with trade account deficit and the deficits (or even surpluses) produced by the two other sub-accounts, i.e., service account and income account constituting the current account are conveniently ignored [3]. This distortion in approach has resulted in and led to a blurred and misplaced focus only on *increasing* exports, workers' remittances, and foreign direct investment (FDI), simultaneously and almost completely ignoring the equally important matter of *decreasing* the outflows or outward remittance of foreign exchange. This is simply because, howsoever, opulent or stable the inflows be, if the outflows are not tightened up, the resultant FERs would be operating under duress; hence this paper.

There are other reasons that warrant undertaking this study, too. Firstly, despite best efforts Pakistan's current account has rarely attained stability keeping BOP challenges constantly hovering on the mind of the polity. Be that due to malady-prescription mismatch or unfaithful enforcement of the policies devised the fact remains that all attempts made to stabilize the external sector have consistently failed. Secondly, quantitatively insufficient and qualitatively below par scholarship generated on the subject also lacked construct validity, in that, it pertained to current account in general or, at best, trade account, primarily focusing on exports and other modes of inflows. Thirdly, the State Bank of Pakistan (SBP), in particular, and the government of Pakistan (GOP), in general, have traditionally tended to place only minimal data of current account constituents in the public domain giving rise to speculations, insinuations and distortions in the knowledge stream on the matter. To be fair, although the outward remittance policy regime has received off-and-on journalistic and judicial hammer since the promulgation of the Protection of Economic Reforms Act, 1992 (PERA), particularly in the wake of Supreme Court's Suo Moto Notice No. 02 of 2018, yet it has rarely been put to rigorous academic dissection [4]. Lastly, the existing knowledge pool takes current account as a unitary function persistently ignoring the fact that it actually sits on three sub-accounts, i.e., trade account, service account, and income account, and that an analysis of the other sub-accounts was equally important if a meaningful scrutiny of Pakistan's ever-existent BOP blues had to take place. The paper looks to fix these distortions, and plug the knowledge gap by singularly targeting the outflows and appraising Pakistan's FE management within the broader policy paradigm that governs its various facets.

**External Sector Fragility**

Although, Pakistan's external sector fragility is embedded and persistent since 1947, yet in order for the analysis to be more topical and relevant, the data for FYs 2003 to 2019 is made the basis of analysis for this study [5]. The time series data of Pakistan's current account deficit for FY 2003 to 2019 is plotted in Figure 1.

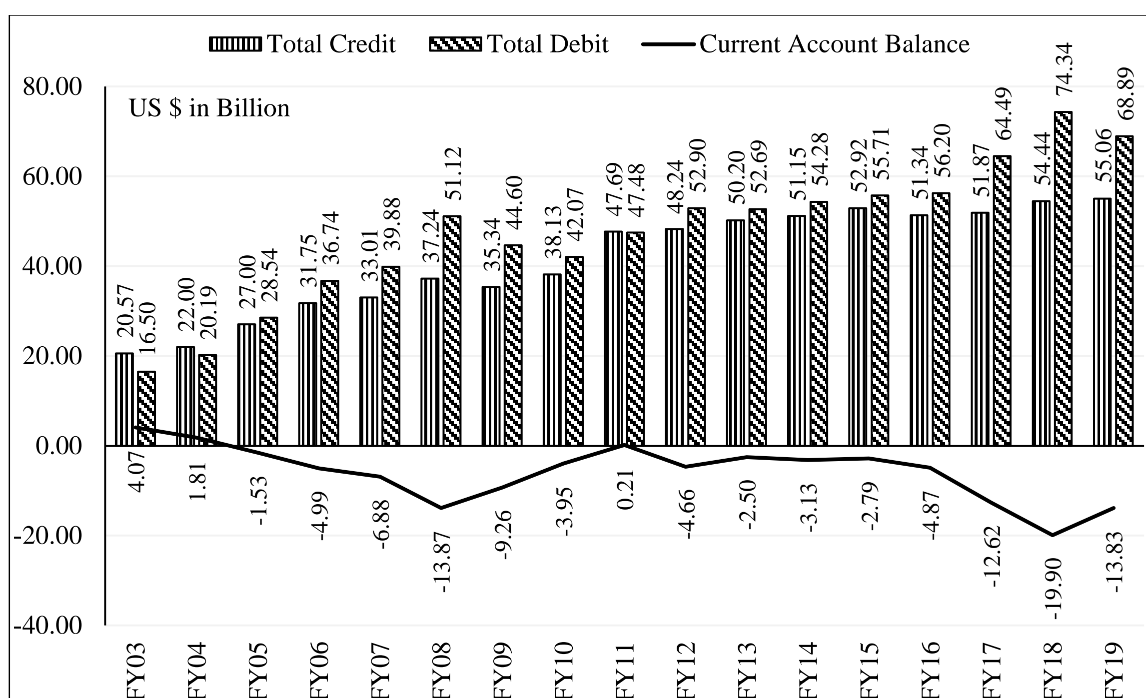


***Fig. 1:** Current Account (FYs 2003-19).*
*Source: Ministry of Finance/SBP*

It is apparent that Pakistan's total current account credits (aggregate of the underlying three sub-accounts) after hitting the highest water mark in 2011 are constantly operating under stress, and receding. On the contrary, the corresponding debits are consistently inching up expanding the delta between the two. Resultantly, Pakistan's current account deficit which was a manageable US $4.07 billion in 2003 ballooned up to a staggering US $19.9 billion in 2018, then showing a visible recovery of US $6.07 billion in 2019. When we shift focus to current account, we get even a clearer perspective. The data of trade account for FYs 2003 to 2019 is plotted in Figure 2.

The difference between debits and credits representing imports and exports, respectively, is constantly on the rise. The import-export gap that was a meagre US $360 million in 2003, jumped to US $31.82 billion in 2018, is down to US $28.52 billion showing a slight recovery of US $3.3 billion. The decline in trade account deficit was not due to any sudden lift in export but the decline in imports induced by import compression measures, e.g., application of regulatory duty on luxury goods. Likewise, the data of service account constituents broadly depicting debits and credits on account of commercial imports are plotted in Figure 3.

This is by far the most neglected and the least-focused BOP item. Starting with zero deficit in FY 2003, and hitting the maximum of US $6.59 billion in FY 2008, the service account retrieves the situation slightly in FY 2013 and FY 2014 before again expanding to US $6.7 billion in FY 2018, and closing at US $4.27 billion in 2019. It is majorly the service account and its constituent sub-heads that are the subject of analysis of the present study. The income account representing unilateral and workers' transfers for FY 2003 to FY 2019 is plotted in Figure 4.

The income account surplus line—the single salvaging factor—is constantly on the rise. However, while Pakistan has persistently pushed to increase its credits, the policy regime governing the debits would have deserved a far more serious appraisal as every year about US $7 billion are remitted out of Pakistan only on this account. The year-wise data of debits and credits of the second account underlying the BOP equation—capital account—are depicted in Figure 5.

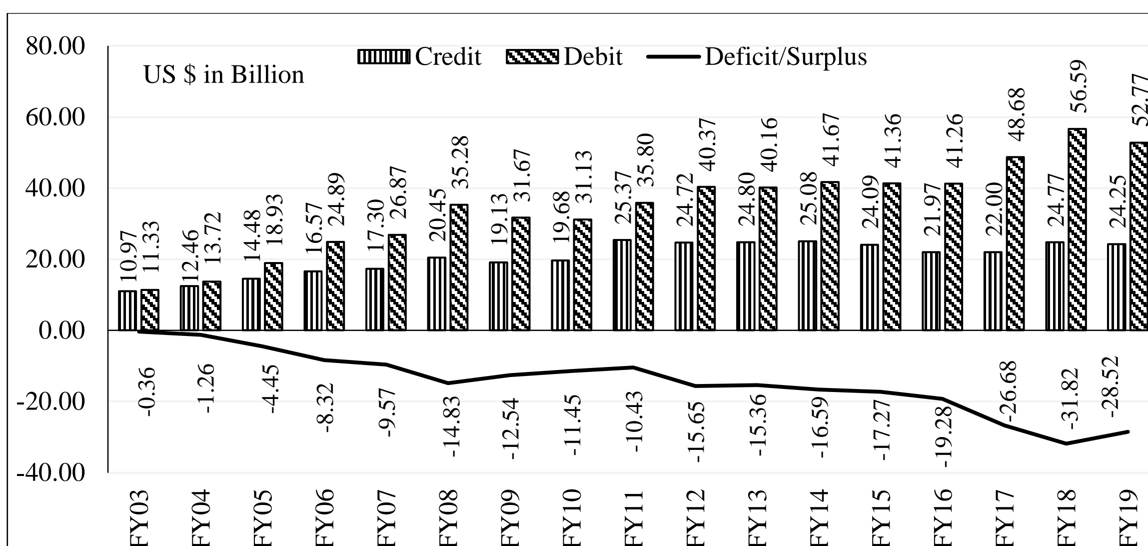


***Fig. 2:*** *Trade Account (FYs 2003-19).*
*Source: Ministry of Finance/SBP*

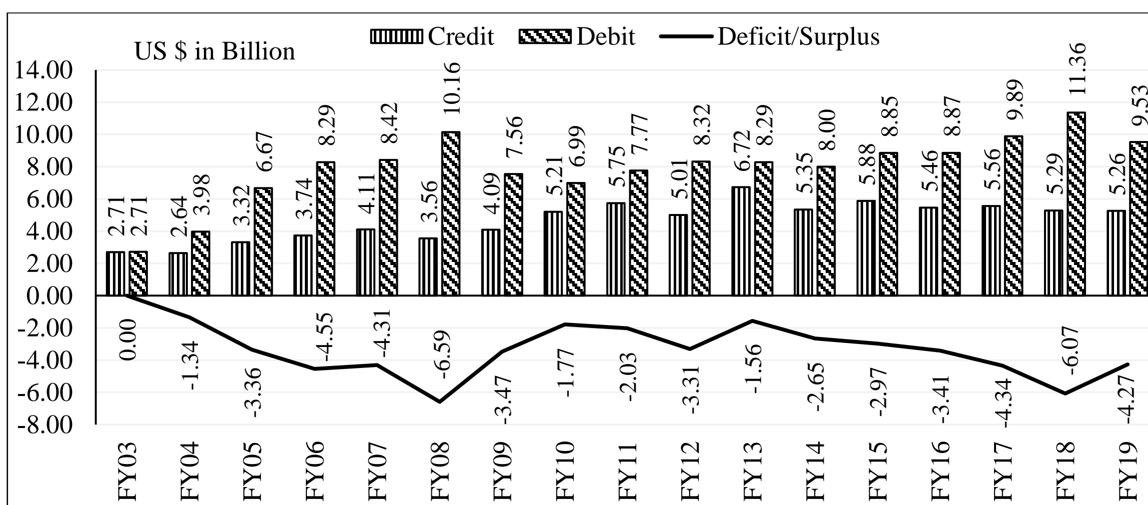


***Fig. 3:*** *Service Account (FYs 2003-19).*
*Source: Ministry of Finance/SBP*

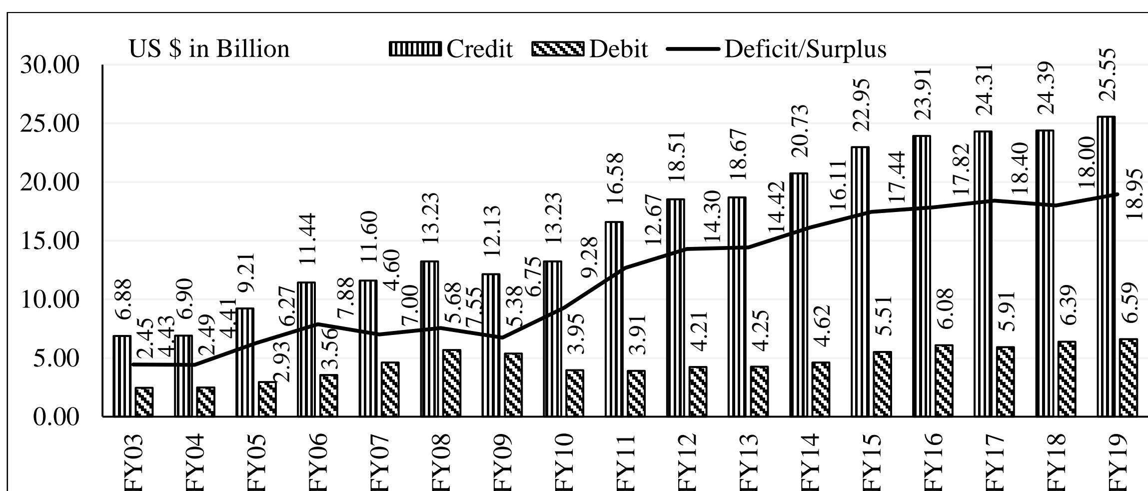


***Fig. 4:*** *Income Account (FYs 2003-19).*
*Source: Ministry of Finance/SBP*

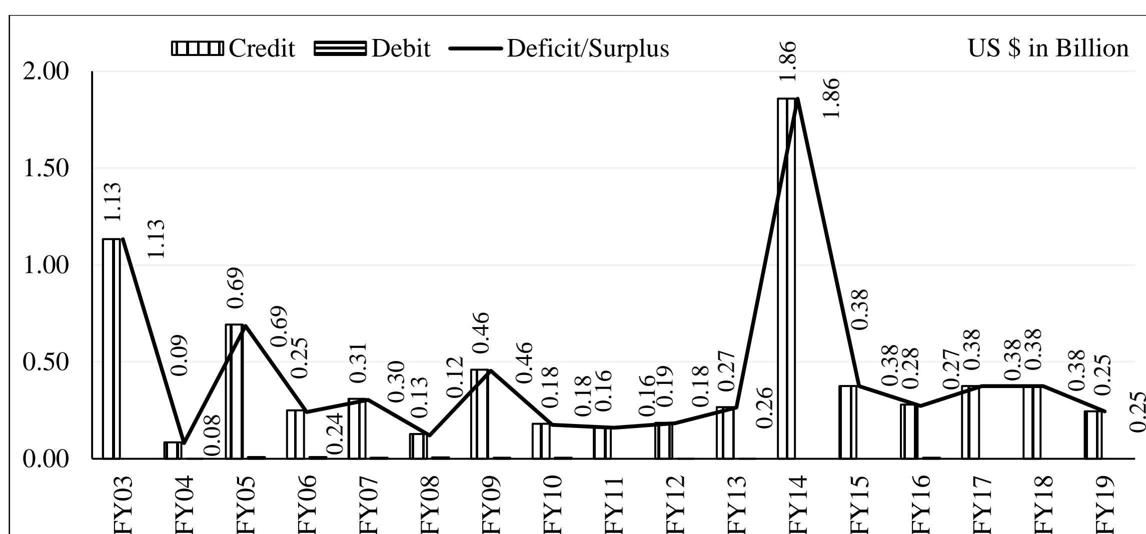


***Fig. 5:** Capital Account (FYs 2003-19).*
*Source: Ministry of Finance/SBP*

**Regulatory Framework**

The SBP is the frontline regulator of all foreign exchange possession and movement—both into and out of the country—with institutions like Federal Board of Revenue (FBR), Federal Investigation Agency (FIA), Security and Exchange Commission of Pakistan (SECP), and lately Financial Monitoring Unit (FMU) also playing their respective roles. The laws, rules, and regulations that directly or indirectly deal with cross-border movement of foreign exchange include the Foreign Exchange Regulation Act (FERA), 1947; the Foreign Exchange Manual (the Manual), 1947; the Foreign Private Investment (Promotion and Protection) Act (FPIPA), 1976; the Protection of Economic Reforms Act (PERA), 1992; the Protection of Economic Reforms (Amendment) Ordinance (PERO), 1999; and the Foreign Currency Accounts (Protection) Ordinance (FCAO), 2001. Although, a critical appraisal of the roles that these important institutions play with a view to bringing out gaps in the operating policies, compatibility of their policies, patterns of coordination among them, and the cooperation mechanism amongst their enforcement outfits, yet this study is geared only to unraveling the interplay between the foreign exchange regulations and the tax system, and there too only with the outward remittance of foreign exchange. The underlying argument is that the weakness or absence of nexus between FE regulations and the tax system bears a significantly negative impact on the fragile BOP position that the country finds itself in perennially. However, the analytical framework developed would open vistas for future research to focus the role of other key institutions, too.

The capital account surplus is indicative of meagre surplus of credits over debits with highest being US $1.86 billion in FY 2014, which is insignificant keeping in view the size of economy.

The paper is planned into seven sections. After section 1 has introduced the topic, section 2 reviews select relevant literature. Section 3 develops the theoretical framework to peg the ensuing debate in, inter alia, from the elitist perspective, and seminally poses set of cardinal questions that must govern each chunk of FE lined up for remittance out of the economy. Section 4 unbundles the bulky concept of *outflows* into its elements and analyzes them within the context of the policy governing each, and its enforcement. Section 5 gleans on systemic aberrations in the FE regulatory regime. Section 6 seminally brings in the taxation framework to the extent it conflates with the FE outflows and identifies the gaps extant therein, which, if implemented, could effectively help protect precious foreign exchange and abate its hemorrhage out of the economy. Section 7 summarizes the debate with a policy proposal that stems from the analysis.

## LITERATURE REVIEW

The twin-reality that not only quantitatively insufficient knowledge has been generated on Pakistan's external sector and whatever little has been produced is qualitatively deficient particularly from the policy perspective, is compelling. Accordingly, a select set of scholarship produced on the subject is being reviewed so as to set the tone for the paper and create its research space. Child, first in the field, by identifying four distinctive phases traces a pattern in the evolution of exchange control systems in Pakistan [6]. Firstly, *implementation*—denoted abandoning of a free foreign exchange market, in the wake of dire BOP deficits, in favor of price-control and rationing of foreign exchange [7]. Secondly, *consolidation*—implied emergence of black market, and extension of regulations "to close loopholes, and to cope with shortages, and to repair the inequities and anomalies" [8]. Thirdly, *rationalization*—referred to consolidation of market segments through simplification of regulations, selective depreciation (through tax and subsidy and exchange rate adjustment), and partial liberalization of the foreign exchange market. Lastly, *termination*—meant further tinkering with the tax and subsidy structure and a return to free-market. Child believed that in the wake of postponement of complete termination, perverted rationalization was set to continue more or less indefinitely [9]. Half a century down the road, one can only compliment Child for his prophetic accuracy.

Chaudhry, against the backdrop of GOP's industrial policy of 1959, which recognized, encouraged and facilitated the inflow of private foreign investment in the country, makes an attempt to determine the size and nature of private foreign investment in relation to the rest of the economy, and particularly examines the "remittances of profits, dividends, etc., made abroad" [10]. By analyzing data for FYs 1964-65 to 1968-69, of out-remittances on account of profits, dividends, royalties and trade, and technical fees, he finds that total remittances, during the period covered, were about 150 percent of the total inflows. This is a revealing insight implying that Pakistan's economy has historically exhibited a penchant to out-remit more than what it could in-remit [11], and the trend continues unabated.

Mahmood and Azhar venture to appraise incentives regime laid in export policies, which instead, due to weak enforcement, resulted in perverse practices, namely, export over-invoicing. By applying the "partner-country data comparison" approach, they confirm substantial over-invoicing across Pakistan's trading partners and products. In the process, they also find existence of a significant differential between the duty drawback rate and the premium on foreign exchange in the kerb market [12]. In another study, Mahmood reckoning the flight of capital from Pakistan as a major policy concern whereby while private citizens continue to pile up foreign assets, the state continues to accumulate foreign debt, explores into the two-way nature of illegal capital flows. By using the measure of trade mis-invoicing between 1972 and 2013, he examines the evolutionary process of Pakistan's exchange and trade control regime through its periodization into four distinct phases to find that reversed capital flight increased "when both current and capital accounts were liberalized, meaning that in the absence of strong regulatory bodies, private citizens could manipulate trade and exchange laws" [13], with relative convenience.

Irfan ul Haque takes an incise glimpse into Pakistan's overtures towards capital account liberalization and the rupee convertibility. He avers that though capital account liberalization appeared to have improved the country's access to private foreign capital, yet, in fact, due to internal law and order situation, and political concerns, the private capital did not flow in substantially. Albeit, capital outflows were not a major cause for the decline in foreign exchange reserves during the economic crisis of 2008, the open capital account and rupee convertibility made the economy, in general, and the current account, in particular, more vulnerable to external shocks. He broadly identifies three areas of concern for Pakistan's economic policy makers—macroeconomic management, tax

evasion, and rupee's convertibility was the tremendous ease—which minimized the real cost of portfolio investment to the country [14]. Mukhtar and Khan take a shot at Pakistan's persistent current account deficit from the perspective of its sustainability. They employ two alternative approaches, that is, incremental approach and solvency approach to analyze time series data pertaining to FYs 1960 to 2012 to conclude that Pakistan's current account deficit was sustainable and that the macroeconomic policies were good enough to successfully stave off any current account deficit crisis [15]. There is some more, directly or indirectly, relevant literature available, too [16].

## THEORETICAL FRAMEWORK

Pakistan's political and economic power structures have long been analyzed within the conceptual scaffolding of elitism [17]. However, Ahmed developed the convenient conceptual vehicle of Elites Ltd, crystallized the elitist model, and expanded the framework to systematically comprehend and interpret monopolization of Pakistan's public policy formulation and implementation processes (particularly in the extractive domain), and dissected it to understand various mutually reinforcing dynamics and cross-cutting mechanics at work by way of an explanation of their historically embedded low performance [18]. The state's political crust, he argues, is essentially underpinned by Elites Ltd, which notional entity, in turn, is composed of six elite groups—industrial elite, business elite, religious elite, feudal elite, military elite, and sundry (judicial, media, non-profits, and professional) elite; that while elites enter into zero-sum transactions on the political chessboard, they resort to non-zero-sum transactions in the economic domain; that elites face a rational actor dilemma in that they need a state to govern but they also need to maintain it at least cost to themselves; that in order to resolve this dilemma, the elitist state takes to optimally extract from international sources; and that since an infinite international extraction is not possible, it descends down to undertake internal extraction through six modes by way of domestic resource-match; and that the six modes that the elitist state resorts to muster the needed domestic resources are inherently perverse, inequitable and border on extortion [19].

**Equilibrium Consensus Subsistence State**

Ahmed, by leveraging Pakistani elites' insatiable desire to extract internationally, argues that Pakistan, in its very essence, may well be a rentier state. Beblawi stipulates that a state could be categorized as rentier if (a) rents situation predominates; (b) the economy relies on substantial external rents and does not require a strong domestic productive sector and a corresponding extractive function; (c) only a small proportion of the working population is actually involved in the generation and utilization of rents; and (d) the state's government is the principal recipient and beneficiary of external rents [20]. Ahmed connects the rentier state propensities embedded in the elicited state structures of Pakistan with its external interested stakeholders to expand the analytical framework to argue that Pakistan may essentially be an equilibrium consensus subsistence state (ECSS), which refers to a process and the outcome (of that process) in the shape of a negotiated settlement of picking up the cost of maintaining the state of Pakistan year after year, between its internal and external stakeholders. He goes on to explicate the ECSS in the following manner:

*The ECSS implies that Pakistani elites and its interested external stakeholders get into negotiations and bargaining to pick least cost of maintaining the state of Pakistan. While internal stakeholders (elites) acting as rational actors choose to contribute the minimum possible and attempt to extract the rest (maximum) from international sources, the external stakeholder also acting as rational actors prefer to contribute the minimum, and exert pressure on the internal stakeholders to contribute the maximum by way of a domestic resource-match. Thus, Pakistan's both internal and external stakeholders get into bargaining and transactions on an annual formula to line up enough resources to keep the state afloat. Soon the equilibrium point is achieved through transactional playoffs between competing actors at which each side*

*is happy with the level of its contribution—though in a dynamic setting [21].*

The ECSS further implies that the consensus arrived at between Pakistan's internal and external stakeholders to keep the state afloat is only at a bare minimal subsistence level and not as a fully functional state well-resourced and capacitated enough to perform its avowed governance functions [22]. Pakistani state's preoccupation with investing in its security apparatus at the expense of provision of basic amenities to the masses could well be seen in this very perspective, too.

**Rentier State Elite**

The paper expands the theoretical framework outlined hereinabove to argue that an ECSS-rentier state is fundamentally an unstable state both economically and politically. It is, therefore, that the rentier state elite (RSE) have their future hedged outside the country rather than inside it. Thus, RSE's primary objective is to seek rents internationally at the state level, have them remitted back, amass resources domestically through elitist of the policy formulation and implementation processes, and then funnel them out of the country. In order to achieve the twin-objective, the RSE choose to lay out a patchy and fractured policy paradigm, and even a more de-capacitated institutional framework to enforce those policies thereby creating a below par regulatory environment under which they can remit-out their resources with ease and anonymity. The RSE, psychologically speaking, nurture a dichotomous worldview—both spatially and temporally—in that, they choose to live their *present* in one state but their *future* in another; *earn* their riches in one state and *expend* them in another; and forge economic allegiance and niche in one state and nurture personal loyalty in another. This may be because of RSE's centrifugal outlook that rentier states have rigidly resisted to develop enough to proffer a wholesome life in there. It has been argued that accumulation of "assets outside Pakistan by Pakistanis is socially, politically, economically and culturally not a desirable situation," which, at some level, "shows that we are not a 'secure' and 'stable' society," and, therefore, ways and means have to be found "to make Pakistan a safe, secure and livable place for…future generations" [23]. This gives rise to a paradox that cannot be relieved until RSE start having faith in the polity and exhibit the same economically.

This is because the RSE are well-aware that the economic system through which they have amassed their riches, is neither just nor sufficient to futuristically protect them, their bounties, and their progenies, and therefore, they do not trust the rentier state system. Thus, RSE have their long-term economic interests laid and hedged in another country rather than in their own; wherefore, logically speaking, they are not expected to nurture any permanent loyalty or faith in the future of the country—inevitable ingredients for any society's march towards self-actualization. Pakistan RSE's shenanigans surfacing from and pertaining to the Switzerland saga, Panama leaks, Dubai leaks, and *Iqama* holding, across the elitist spectrum—industrial, business, feudal, media, religious, civil and military mandarins, and professional elites—ought to be seen in this context. In the wake of too many states competing for the productive and lucrative individuals to be their citizens or residents, the rich of the world have practically stateless [24].

Pakistan RSE's centrifugal economic overtures can theoretically help explain not only the ever-present stress on the BOP but also on the ever-depreciating exchange rate. The textbook explanation for the external sector stress is less inflows of foreign exchange into the economy as compared to the outflows. An equally plausible counter-explanation, however, may be in terms of dubious and clandestine outflow of foreign exchange from the economy by Pakistan's RSE—in addition to, of course, legitimate outflows as needed by the economy. Now excessive foreign exchange inflows appreciate the exchange rate, which renders the price of goods and services produced in the economy price-incompetitive, internationally. This, in turn, not only reduces possibilities of earning more foreign exchange but also of retaining the same outside through under-invoicing. An

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appreciated exchange rate also does not add to the value of assets held abroad relative to those held inside the country. After all, most predatory states—particularly those earning bulk in petro-dollars tend to park some of their surplus foreign exchange outside their economies, both legally and illegally, so that their exchange rates do not appreciate beyond desired limits potentially breeding in competitiveness in the economy in the short-run and Dutch Disease effect in the long run [25]. The conduct of Pakistani RSE and the insuperable BOP blues that constantly undermine the stability of the economy gel well with each other to galvanize the ensuing debate. It has been argued that the controversial tax amnesty scheme, 2018, was an outright elitist initiative triggered to prevent state recoil on the impending inflows of bank and financial account information from across the globe under the OECD's CRS framework [26].

**Hypotheses**

It is hypothesized that in Pakistan's case low FERs is not as much a function of scant *inflows* as much of lax *outflows*; that the overarching objective of Pakistan's economic policy has been to procure FERs on 'beg, borrow, or steal' basis while simultaneously keeping apertures open to all soft siphoning off hard-earned FE out of the country; and that FERs is the product of well-coordinated, holistic and par policies to expend them prudentially as much as it is that of calibrated, well thought-out and sufficiently capacitated institutional framework equipped with adequate enforcement handles to regulate their out-remittance at the process level. Moreover, it is contentiously argued that Pakistani elites deploy both covert and overt tools to keep the windows for outward transfers open; that the outward remittance regime has historically been lax—never tightened under any political government or the overarching economic policy paradigm; that the enforcement functions of the state by a whole spectrum of institutional framework have been made to work in isolation; that the institutions entrusted with the responsibility to enforce foreign exchange policy are insufficiently equipped; that parallel legal regimes are introduced to carry out the RSE's "darker purpose;" and that external sector's sanctification is raised to the mantle of an ideological edifice by creating confusion to keep the policy holes intact [27].

**Cardinal Questions**

It goes without saying that all states reserve an unbridled right not only to determine the credentials, but also the remittablility of every single amount denominated in local or foreign currency that is sought to be transacted out of its jurisdiction. Theoretically speaking, the remitting state, with regard to every amount that is lined up for out-remittance, before the actual transaction takes place, poses and answers—explicitly or implicitly—the following five inter-related sets of questions:

***Amount***

- Is the remittable amount legal?
- Has the remittable amount arisen from sources located within its own territory?
- Does the quantum of the remittable amount match the sources claimed?
- Has the source discharged all liabilities vis-à-vis the remittable amount, e.g., sales tax (both federal and provincial), federal excise duty, and other provincial and municipal levies?
- If the remittable amount carries the character of an income, has the tax thereon been charged and paid?
- Is it the same amount on which tax is claimed to have been defrayed?

***Channel***

- Is it being remitted through legal channels?
- Does the transaction leave enough trail of transparency?

***Purpose***

- Is the amount being remitted for a legal purpose?
- Does the amount being remitted make an economic rationale of an equal value?

***Remitter***

- Does the amount being remitted legitimately belong to the remitter?

- Is the remitter legally authorized to undertake the remittance?

***Remittee***
- Is the remittee entitled to receive the amount?
- Is the amount going exactly to the person who is its purported recipient and in the same exact value?

Apparently, these are straightforward questions, but answering them by one law enforcement outfit or a regulatory authority in isolation of others, in respect of every single transaction, becomes challenging, if not impossible. Therefore, states look to mobilize sets of policies, laws, and institutions that not only work together in combine but also interact dynamically and complement each other so that no amount of resources unjustifiably gets remitted outside their jurisdictions. Thus, when it comes to out-remittances, states weave institutional networks specializing in different areas of statecraft to target various questions that fall within their area of operations. In Pakistan's case, in addition to the frontline regulator—SBP, there are a number of other institutions that directly or indirectly deal with outward (or even inward) movement of money and foreign exchange. The requirement to answer these questions remains valid irrespective of the governing economic policies. It is argued that the tax system's oversight towards addressing most of the aforementioned questions is of key import and if focused and deployed properly can directly target the offshore evasion problem which is haunting most of the developing countries in the post-Panama world.

**Research Approach**

The research approach is to unbundle the weighty goliath of outflows under both the current account and its constituents, and the capital account. The debit side constituents as recognized by the Manual are analyzed in terms of the operating FE regulations. In the process, the operating regime under the FE regulations is contrasted and appraised against the relevant tax laws to gauge if the nexus between the two systems exists and if it does, is strong enough to effectively deter FE outflows in all inappropriate situations. The gaps and distortions so identified feed into the formulation of policy proposals towards the end. Thus, in addition to undertaking a brief survey of the regulatory regime as enshrined in the Manual, the study inducts into the analysis an extensive appraisal of the tax law and its enforcement that can, directly or indirectly, not only impacts FE and its movement abroad but also tax cost to the exchequer, money laundering, illegal transfers, and the offshore problem. The underlying assumption remains that taxed monies are hardly concealed; those rarely get converted into foreign exchange, and nearly never cross borders; the reverse is also true; hence, a state has vested interest in enforcing its tax laws with callousness if it ought to stave off the BOP crisis. Essentially, it is political economy analysis of Pakistan's external sector in the sense that while an economist tells what happens and how, a political economist tells why that "what" happens and who causes it to happen—and contextually, why Pakistan is consistently failing to maintain its FERs at a par levels.

## FOREIGN EXCHANGE REGULATORY REGIME

The Manual defines "outward remittances" as the "sale of foreign exchange in any form and includes not only remittances by TTs, MTs, drafts, etc., but also sale of travelers' cheques, travelers' letters of credit, foreign currency notes, and coins, etc.," which "can be made either by sale of foreign exchange or by credit to non-resident Rupee account of banks' overseas branches or correspondents" [28].

**Mechanism of Outward Remittances**

The SBP authorizes all authorized dealers (AD) to "sell foreign exchange for approved transactions" in accordance with the procedure laid down in the Manual [29], under which, any person desiring to undertake an outward remittance is required to apply with an AD formally [30]. If the AD, having conducted its examination "is satisfied that the application is covered by the regulations and it is empowered to approve the remittance … if

may affect the sale of foreign exchange" [31]. If, however, the AD determines that "the transaction requires prior approval of the State Bank," it would transmit the application to SBP for consideration with its comments, stamp, and signatures [32]. At the time of submission of the applications to SBP, the ADs are supposed to "take all reasonable precautions to satisfy themselves as to the *bona-fides* of the applicants," as also to the completeness of applications in all necessary respects [33]. The ADs are also under obligation to caution the applicant that "it is an offence to give any information or make any statement which he knows or has reasonable cause to believe to be false or not true in any material particular" [34].

When authorizations are received from SBP, ADs must see "that they bear its embossing seal," and that the same have been "signed by officers whose specimen signatures" are available with them [35]. These filters are obviously aimed at reducing, and if possible, eliminating chance of any foul play. The authorizations accorded by SBP are valid for a thirty-day period unless specified otherwise [36]. Once the amount has been transacted, it "must be endorsed on the reverse of the permit giving the amount and date of remittance" under the relevant stamp and signature, and returned to SBP along with Form "M" on which the remittance is processed [37]. The ADs are also supposed to file with the SBP a monthly exchange report (MER) duly supported by relevant documents "in cover of each remittance effected by them" [38] It has also been stipulated that where any person acquires foreign exchange for any particular purpose, subject to stipulated conditions, he would use it for that specified purpose; else the foreign exchange would have to be surrendered and returned [39].

**Criticality of Outward Remittances**

Theoretically, all states impose a tight regime on outward remittances—not only in foreign currencies but also in local currency as the same can be used to launder funds, finance terror, wage proxy wars, destabilize other states, undertake syndicated smuggling, and commission other criminal ventures. The outbound remittances are important from five important dimensions. Firstly, outbound remittances end up liquidating hard-earned foreign exchange, which is so critically important as it determines a state's ability to shop internationally, and, therefore, all states—rich or poor—are continually striving to increase their FERs. Secondly, all states want not only that the resources that get generated in there are also consumed in there, but also that the resources earned elsewhere get remitted and invested in their own economies; hence, the default mode on remittance is facilitative on in-bound and restrictive on out-bound remittances. Thirdly, the outbound remittances, howsoever, economically justifiable, might be taxable inside their own jurisdictions under the applicable fiscal laws. Fourthly, all countries look to create a nexus between exchange regulations overseeing outbound remittances and the tax laws—with interplay of both creating a synergy towards improving the economic health and governance of the state. Lastly, FERs is a sign of a country's economic strength, political clout, and national power, and therefore, the gut-response is to put curbs on its reduction and release.

**Modes of Outward Remittances [40]**

The Manual majorly identifies five composite modes of outward remittances, i.e., imports, commercial remittances, insurance business, private remittances, and travel. A brief critical appraisal of each of these modes follows in due order.

***Imports [41]***

The Manual lays down elaborate regulations empowering ADs to sell foreign exchange "against import of goods into Pakistan from any country" [42]. Since 2002, importers are no more required to get themselves registered with the Trade Development Authority of Pakistan (TDAP) [43] as long as they have some other unique identification numbers [44]. At the time of establishing a letter of credit (LC) or registering a contract, ADs are duty-bound to "take all precautions to ensure that the goods to be imported under it are clearly identifiable under the Import Trade Control

Schedules" [45]. In case of a doubt the matter could be referred to and resolved with the Trade Development Authority of Pakistan (TDAP) [46]. Similarly, ADs "may issue foreign currency demand draft for import of spare parts/machinery, without opening letter of credit, provided such imports are made by air or by courier" [47] The ADs have also been authorized to approve, on SBPs behalf, "applications for remittance against imports into Pakistan provided the documents covering imports," whether under LC or otherwise, are received through them and the conditions set out are complied with [48]. Imports can be paid for through LC, or with LC against documents received for collection on the basis of registration of contracts, or as clean remittance without opening of LC and registration of contract [49]. LCs may provide for "payment to the beneficiary either in the country of origin or goods or in the country of shipment of goods," [50] or even "in a third country" if it does not involve any extra expenditure [51]. LCs providing for payment through common methods including "in any foreign currency" does not necessarily warrant SBPs authorization, but in other situations it is required [52]. Likewise, establishing "clean, revolving, transferable or packing" LCs is not permissible [53]. However, "importers are permitted to make imports without opening" of LCs or registering indents, proforma invoices or orders with ADs, and "make remittances there against after receipt of goods in Pakistan" [54]

The remittance of advance payment against up to 100 percent value of the goods being imported is permitted should ADs "take all possible measures to verify the bona-fides and genuineness of the transaction," and also "get the credit worthiness report of the foreign supplier before allowing advance payment" [55] In case of non-delivery of goods within four months, both the bank and the importer are liable to ensure repatriation of foreign exchange released as advance payment [56]. The ADs have to ensure before establishing an LC that "a firm commitment exists," and that "an invoice, order or indent has been issued by an indentor" [57]. It is also desirable that ADs "obtain a confidential report on the exporter from their branches or correspondents abroad or in their discretion to satisfy themselves as to the standing of the shipper" [58]. The SBP also permits opening LCs or registering contracts "for imports into Pakistan providing for payment on usance basis" provided the LCs do not "stipulate payment of any amount by way of interest separately" [59]. Public sector entities (PSEs) that have been "allocated foreign exchange for their import requirements" are required to seek SBPs approval before establishing an LC or registering a contract [60].

Currently, the Manual creates only an oblique reporting requirement for importers vis-à-vis their tax status. In a fast globalizing world, as old mores are losing their luster, new ones are being innovated and developed at a rapid pace improving the extant regulatory systems cast in primordial snail-pace paradigm of international commerce. With digitalization of the world economy fast-dawning as an inescapable reality, and the LC and its functional commercial instruments going irrelevant, it may be the time to holistically harness the monsters like the MNC, tax haven, stateless incomes, transfer pricing, and money laundering. It is, therefore, imperative that FE released against prospective imports is brought under multiple regulatory frameworks so as to optimally address the cardinal questions framework devised in the following section *insurance business*.

***Commercial Remittances***

Broadly speaking, commercial remittances refer to the out-remittance of revenues and incomes earned by non-residents in Pakistan. A brief survey of the regulations governing various sub-types covered under commercial remittances follows so as to glean the gaps within the FE regime, in general, and in the FE-tax regulatory combine, in particular.

*Surplus Passage and Freight Collections by Foreign Airlines [61]*

The Manual empowers ADs to permit remittance of surplus passage and freight collections including inward remittances equal to the amounts of passage and freight actually realized less disbursements, refunds,

and income tax paid or payable [62]. However, no remittances are allowed in excess of the balance available in the account, as it is not permissible to make remittance out of borrowed funds [63]. The remittances of this nature can only be transacted twice a month. Manual then creates a mild nexus with tax laws when it stipulates that the application that a foreign airline would make must be accompanied by "Auditors' certificate showing payment of income tax, or exemption certificate given by the Revenue authorities" [64].

Over time, taxation of aviation industry has internationally grown complex; more so in Pakistan particularly in the aftermath of 18th Amendment to the Constitution. The double taxation conventions (DTCs) that Pakistan has signed with other countries can also possibly complicate the taxation of foreign airlines. Foreign airlines operating in Pakistan are chargeable to tax on gross basis in terms of the gross amount received or receivable anywhere for the carriage of passengers, livestock, mail or goods embarked in Pakistan, and the gross amount received or receivable in Pakistan for the carriage of passengers, livestock, mail or goods embarked elsewhere [65] at an the rate of 3 percent [66]. The airlines or their sales agents may also be liable to withhold tax at the rate of 5 percent [67] of the gross value of the domestic air ticket and deposit the some in the exchequer [68] and at the specified amount [69] for the international air tickets [70]. The airlines are also responsible to collect federal excise duty on the services provided or rendered in respect of travel by air of passengers on both national and international routes [71].

The non-payment of taxes leviable on the airlines on all or any of these counts hurts the exchequer, but out-remittance of foreign exchange equal to the tax evaded amount would hurt doubly. This is where there is a strong case for a robust regulatory oversight on the non-resident aviation industry operators under the FE and tax laws [72]. It has been empirically proven that Pakistan has lost too much of its fiscal base to foreign airlines, and its impact is going to tell on the BOP as well. With OECD—negotiating on behalf of advanced capitalist economies—taking hard position, and UN's spineless acquiesce on the position, most developing countries are going to feel the pinch on this score [73]. In spite of the elaborate reporting requirements as enshrined in the Manual, a closer nexus with tax laws would help bring in a scrutiny framework under the cardinal questions.

*Surplus Passage and Freight Collections by Foreign Shiplines [74]*

The ADs are empowered to allow remittance of surplus passage and freight collections plus inward remittance, to the extent of amounts of passage and freight actually realized less disbursements, refunds, and income tax paid/payable [75]. However, no remittance is to be allowed in excess of the balance available in the account [76]. The Manual then creates a slight nexus with the tax laws when it stipulates that the application that a foreign shiplines would make must be accompanied by "Auditors' certificate showing payment of income tax, or exemption certificate given by the Revenue authorities" [77]. Foreign shiplines operating in Pakistan are chargeable to tax on gross basis in terms of the gross amount received or receivable anywhere for the carriage of passengers, livestock, mail or goods embarked in Pakistan, and the gross amount received or receivable in Pakistan for the carriage of passengers, livestock, mail or goods embarked elsewhere [78] at an the rate of 8 percent [79]. It has been emphatically argued that Pakistan's tax base has been eroded substantially due to reckless signing of DTCs thereby extending reciprocal exemption on shipping industry, and its impact tells on the external sector [80]. It is posited that in view of the extensive reporting requirements as enshrined in the Manual, a closer connection between exchange regulations and tax laws would help enforce the framework of cardinal questions more robustly and result in improved economic management and governance [81].

*Freight Charges by Freight Forwarders/Consolidators [82]*

The Manual permits freight forwarders, subject to SBPs prior approval, to remit their

locally earned freight charges to their principals abroad. Accordingly, ADs have been authorized "to effect remittance of surplus freight directly on behalf of the concerned freight forwarders/consolidators on a monthly basis, after verification of documentary evidence in support of the remittance" [83]. The regulations do not prescribe any role of tax department in this connection although the amount being remitted out has an unequivocal character of income, prima facie, chargeable to tax in the source state.

*Charter of Foreign Ships and Aircrafts [84]*
The Manual implies that the contract for the charter of an aircraft owned by a non-resident person should have been approved by Ministry of Defense, and the contract for the charter of a ship owned by a non-resident person by Ministry of Communication. The ADs can lodge applications with SBP duly supported by the required documents "within 15 days of the expiry of the agreement" [85]. Ship owners, charterers, and operators of all floating crafts including tugs, dredgers, survey vessels and other specialized crafts are also permitted to open and operate foreign currency accounts "for both receipts and payments of foreign exchange." The foreign currency account holders can "retain their surplus earnings in these accounts" but are liable to surrender it within three months of the closing of the financial year [86]. Prima facie, the amounts remittable in foreign exchange on this count are chargeable to tax at source, and liable to undergo withholding tax at the rate of 20 percent [87]. Once again, the Manual does not address the tax dimension of the transaction, reinforcing the need to induct the cardinal questions framework into the process.

*Royalty/Franchise and Technical Fees [88]*
The Manual prescribes elaborate rules for the remittance abroad of foreign exchange on account of royalties and franchise and technical fees earned in various sectors of the economy. In respect of the manufacturing sector, "Royalty" has been defined as "a fee paid by a local firm to the foreign collaborator in consideration of "License to use the foreign manufacturer's patent/brand name for marketing the product(s) [89]; and "Technical Fee" as "a fee paid by the local firm to the foreign collaborator in consideration of engineering and technical services including assistance on manufacturing process, testing and quality control, assistance by way of making available patented process and/or secret know-how and right to avail of the technical/confidential information resulting from continuous technical research and development, etc.; and technical training of local personnel" [90]. A restriction has been imposed on repatriation of technical fees in respect of "simple conventional process goods which are being produced in the country without foreign technical collaboration" [91]. In connection with the agriculture, social, infrastructure and service sector projects including international food chains, an initial *lump sum* fee is allowed to the foreign investor or the provider of technical expertise or brand name up to a maximum of US $100,000 [92]. Franchise fee is permitted up to a maximum of 5 percent of net sales, i.e., minus sales tax in the food sector in respect of "core items of the franchise and…specialties of the trade name" [93]. In respect of both of these categories the agreement executed between the local firm and the foreign collaborators, for the transfer of technology has to be submitted for approval within one month of its signing through the designated bank which would be authorized to transact remittances without prior approval of SBP subject to the fulfillment of the laid down procedure and conditions [94].

In respect of the financial sector, royalty, franchise or technical fee, or commission or service charges, as the case may be, are allowed by SBP on application lodged by commercial banks, non-banking financial institutions including leasing and *modaraba* companies and investment banks in favor of their foreign collaborators in respect of their branded financial products and services within the area of their authorized business subject to the condition that one-time lump sum royalty, technical or franchise fee does not exceed US $500,000, and the recurring payments would not exceed 0.25 percent "in aggregate of customers' billing net of taxes and surcharges…recovered from the customers or

met through the financial institution's own resources" [95]. The ADs then are authorized to transact remittances without prior approval of SBP subject to the fulfillment of the prescribed procedure and conditions [96].

The tax law does not create a distinction between royalties or fees for technical services (FTS) as both are chargeable on gross basis, simultaneously being liable to undergo withholding tax at the rate of 15 percent [97]. Every single amount of whatever denomination howsoever characterized according to any principles of taxation is taxable on source rule—at the given rate with non-DTC countries, and at the mutually agreed rate with DTC countries [98]. The Manual does create a nexus of outward remittances on this account with the tax system by warranting submission of "a certificate from the auditors of the paying firm" as regards payment "of income tax" [99]. However, if "it is claimed that the amount of Royalty/Franchise and Technical Fees is exempt from levy of Pakistan taxes, the applicant should invariably produce a certificate to this effect from the competent tax authority" and an attested copy of the said certificate should be enclosed with the prescribed application to be sent along with other relevant documents while reporting the transaction to the SBP [100]. The royalties and FTS are major ploys of profit shifting and base erosion and are also used for transfer pricing (TP) purposes, and that is what problematizes the issue on quite a few counts. Firstly, the Manual prescribes reporting to and not approval by the SBP of the requests for outward remittances submitted by ADs on behalf of the prospective remitters. Secondly, the definitions as enshrined in the Manual are skinny and vary in scope as compared to those contained in tax laws [101]. Still in each DTC there could be different definitions of royalties and FTS. Thirdly, there are certain types of payments broadly characterized under the head royalties and fees for technical services that are also chargeable to FED, which the Manual apparently does not admit of at the moment. Fourthly, auditors' certificate hardly means anything in the prevailing socio-cultural environment; this is a trite situation of conflict of interest. Lastly, exemption certificate as stipulated in the Manual is vague and static in that while foreign exchange can be remitted on monthly basis no specifications have been made for the exemption certificate. The same is probably true of a reduced rate certificate; a lot has been left to the remitter, the auditor and the intermediary banker to decide upon something as sensitive to decide upon as the issue of foreign exchange out-remittance. If one were to pinpoint one area which would seriously require extension of the cardinal question's framework, it is FTS and royalties.

*Technical Services, Consultancy Agreements, and Foreign Technicians [102]*

Private sector firms are allowed to employ foreign experts and technicians for "technical services as supervision of installation, commissioning of plants and training of personnel," without approval of any government agency [103]. Accordingly, ADs are authorized to "allow remittances for engagement of foreign experts/technicians to foreign firms or establish letters of credit available for payment of such charges on production of beneficiary's service invoices/bill duly certified by the employers in Pakistan" [104]. The payment on account of technical services rendered by foreign consultants and technicians carry all the characteristics of income chargeable to tax in Pakistan. However, the Manual stipulates that the responsibility "to ensure that income tax has been correctly deducted from the amount payable to the foreign beneficiaries and paid to the income tax authorities or exemption certificate from the income tax authorities is called and recorded," rest with ADs, exclusively [105]. This is like deregulating an entire sub-sector involving substantial risk to both the BOP as well as the exchequer, and warrants retrieval through coverage of the cardinal questions framework.

*Remittances by Information Technology Sector [106]*

The Manual accords general freedom to ADs to release foreign exchange up to US $100,000 for private sector companies incorporated and branch offices operating in Pakistan with permission of Board of Investment (BOI) to undertake business activities, pay local taxes

and periodically repatriate their profit abroad…on account of utilization of IT services "after satisfying themselves" [107]. There is no doubt that the funds lined up for out-remittance on this account have not only been earned but are also taxable in Pakistan. However, the FE regulations create only an oblique nexus with the tax system by stipulating that the application on Form "M" for such a remittance should be duly supported by evidence of "payment of income tax or exemption certificate" by the tax authorities [108]. It has been observed that an exemption certificate issued by the tax authorities could be misused. Likewise, ADs could out-remit FE on production of an exemption certificate that might have already been expired or consumed or accept an auditor's certificate in lieu of an exemption with serious consequences.

*Profits by Foreign Banks/Companies [109]*
The exchange regulations at length cover outward remittances on account of repatriation of profits earned by branches of foreign banks operating in Pakistan to their head offices abroad. The applications in this respect are to be lodged on Form "M" and duly supported by a certificate from the auditors in Pakistan that tax provision made in the accounts is sufficient to meet all tax liabilities in Pakistan, or copies of final assessment orders and forms duly certified by the revenue authorities [110]. An almost identical scheme has been laid down for the remittance of net remittable profit by the branches of foreign companies…operating in Pakistan to their head offices abroad [111]. The Manual also lays down a process whereby a company other than a bank, insurance company, airlines or shiplines can remit its profits abroad, but it is sans any meaningful nexus with the tax system [112]. The assessment order, in normal circumstances, has already become extinct. Likewise, since 2008 an additional levy in lieu of branch profits tax has also been imposed. Keeping in view the fact that auditors have vested interest in issuing certificates in many an inappropriate situation, the viable alternative option is to bring the tax nexus through a robust coverage of the cardinal questions.

*Payment of Dividend to Non-resident Shareholders [113]*
The Manual authorizes ADs to undertake remittance of dividends to non-resident shareholders of resident companies without prior approval of the SBP, but subject to compliance with the reporting and disclosure requirements [114]. The ADs, inter alia, are also required to ensure "that the application for remittance of dividend is net of Pakistan tax liability," and "that the auditor's certificate to this effect on the application is from a well-known firm of auditors" [115]. The ADs ought to satisfy themselves that in case of a claim of tax exemption being put forth by "any of the shareholders, a certificate to this effect is invariably produced from the competent tax authorities" [116]. Intriguingly, the words "that the auditor's certificate to this effect…is from a well-known firm of auditors," conversely imply that under other heads a certificate from a firm of auditors with dubious credentials could be submitted. Moreover, the term "Dividends" has been defined differently in different laws. Currently, dividends are taxed at the rate of 15 percent in normal cases [117]. However, DTCs have multiple rates depending upon mutual give and take between states. However, Section 152 (5) enjoys unlimited freedom to potential remitters and their ADs by extricating itself from all reduced rate situations [118]. The coupling between FE regime and tax system is botched in that it does not cater to the reduced tax rate regime under the tax treaty network or to the revised treaties. All these shortcomings of the current regime warrant bringing the alternative nexus approach between the FE regulations and tax laws.

*Sundry Sources [119]*
In addition to the above-outlined more important heads, a number of smaller heads of outward remittance can cumulatively end up adding substantially to the BOP blues in the Pakistani context. Such smaller sources include (a) General Average Payments; (b) Operating Expenses of Pakistani Shipping Companies/Airlines; (c) Export Claims; (d) Guarantees for Payment of Claims; (e) Employment of Overseas Agents; (f) Export of Dividend Warrants; (g) Foreign Articles to

Pakistani Newspapers and Magazines; (h) Remittance on account of News Features, News Picture, Syndication Services, Gambles, Comics, Puzzles, and Book Reviews; (i) Advertisements in Newspapers and Magazines abroad; (j) Bank Charges and Sundries; (k) Purchase of Tender Forms from abroad; (l) Registration of Patents and Trade Marks in Foreign Countries; and (m) Registration of Exporters of Pharmaceutical products in Foreign Countries [120]. If put to a close scrutiny, most of these amounts could fall in the nexus of Pakistan tax laws and also liable to withholding tax as all of them would eventually be charged to Pakistan accounts diluting the relevant tax person's taxable incomes. The countries constantly facing BOP crisis ought to be able to manage potential risk by addressing the cardinal questions in a comprehensive manner.

**Insurance Business [121]**

The Manual lays down elaborate exchange regulations governing insurance businesses operating in the country. The branches and "agencies in Pakistan of insurance companies," it has been stipulated, "whose head offices are situated abroad are, for exchange purposes, subject to the same regulations as insurance companies registered in Pakistan" [122]. In fact, all foreign exchange remitted outside Pakistan as premia on account of various insurance policies—life, health, export, import, etc.—to various insurance and re-insurance companies abroad, does carry all essential traits of income chargeable to tax in Pakistan [123]. Moreover, most leading international insurance and re-insurance companies prefer to operate in other countries, particularly developing ones, without having to establish a branch office therein—dubbed as PE in tax tongue. In view of this, Pakistan has introduced an upfront withholding tax of 10 percent on the value of all kinds of insurance and reinsurance premia remitted outside the country under various types of policies and items associated with them [124]. In spite of this, the Manual does not even make a mention of the tax system. If, however, a nexus is created between Pakistan's exchange regulations governing insurance business and the tax system, it could yield significant gains on, at least, two counts for the country. Firstly, it could help thwart some of the dubious transactions that take place due to absence of an over-sight of the tax administration. Secondly, it would trim the size of the foreign exchange remittances to the extent of Pakistan tax applied. A complete iron-curtaining between the two regulatory regimes—exchange regulations and the tax laws—may have encouraged soft outflow of remittances which, otherwise, might have been averted or charged to tax in Pakistan.

**Private Remittances [125]**

The exchange regulations allow out-remittance of assets by foreign-born nationals, foreign-born wives of Pakistan nationals, Pakistanis holding foreign passports and stateless refugees, retiring permanently from Pakistan to settle abroad. The assets have been defined to include bank balance, sale proceeds of securities and other items including real estate purchased by the applicant out of his genuine savings during his stay in Pakistan [126]. A number of documents have been listed for submission to SBP along with the application to be made in this connection. A mild nexus has been created with the tax system by stipulating that in case of "self-employed foreign nationals, instead of employer's certificate, certified copies of their final income tax assessment orders for the preceding two years will be required" [127]. This is partly anachronistic in the sense that tax department has, per se, long stopped its practice of making assessment orders; instead, the returns filed constitute assessment for all legal and administrative purposes [128]. Additionally, private remittances are authorized to various persons on account of sales of imported vehicles; legacies and distribution of assets from the estate of deceased persons; family remittance facilities; issue of permits; remittance by self-employed foreign nationals—doctors, lawyers, architects, consultants; foreign employees of merchant navy; travelers' cheques; subscription to foreign magazines, periodicals, and purchase of books; remittance by book-sellers and subscription agencies in respect of foreign journals and magazines; imports by actual users; membership fees of educational,

technical, professional and scientific institutions; correspondence courses; fees for appearing in examinations held in Pakistan by various external evaluation agencies; and sundry private remittances not covered expressly [129]. Most of these amounts would be taxable in Pakistan but even in respect of transactions that are not chargeable to tax as income those need to be backed up by legitimate/taxed source, and a dynamic cross-visibility to exchange regulators and tax collectors of these transactions would give a nice peep to both regulators into the financial health of the remitters with the likelihood of thwarting out-remittance in all inappropriate situations.

**Travel [130]**
The Manual also sets out instructions in accordance with which the airlines, shipping companies, and travel agents may sell tickets and ADs may release foreign exchange for travel abroad. In this connection, regulations cover release of foreign exchange for travel by non-resident Pakistan nationals, foreign nationals, professional training, *Tablighi*, *Hajj,* medical treatment, migration, business travel, trade fairs and exhibitions, study abroad, as well as for the purposes of maintenance of expenses of the families of Pakistanis living abroad temporarily [131]. It is not a wholesome set of rules in, at least, three important respects. Firstly, these rules, whosoever elaborate, comprehensive and detailed, have been rendered irrelevant by the exchange market liberalization ushered in by PERA, 1992. Secondly, a substantial portion of these rules have become redundant after being overtaken by a wide-going process reengineering in the arena of international travel. Thirdly, the absence of the tax nexus creates a space for FE out-remittance in situations that could be salvaged merely through regime tightening. Thus, an adequate tax nexus would help create a deterrence against avoidable out-transactions out of which some even may be taxable in Pakistan, which when charged to tax could chip off a certain portion of the total remittable amount.

**FE Regulations and Tax Nexus**
The FE regulatory regime as gleaned and appraised in the preceding paragraphs gives a fairly good view that not only that the FE–tax nexus is thread-thin but also that the FE regulatory regime in itself is patchy, incoherent, and archaic, and in serious need of fine-tuning, tightening and a comprehensive de-novo touch. The inter FE-tax system nexus is gauged on the scale of "No," "Mild," and "Robust" and tabulated for a ready reckoner (Table 1).

**FE Regulations-Tax System Nexus**
It transpires that generally SBPs oversight is on a weaker side as in most cases ADs are supposed to just report the transactions in their MERs with prior approvals being far and few in between. The SBP, in its regulator's role periodically undertakes compliance audit of its regulatee banks, but then who audits the auditor? Of late, SBP has locked horns with the Auditor General of Pakistan, with the latter insisting, in the aftermath of 18th Amendment to the Constitution, to audit the former. It is generally believed that SBP tends to throw only scant, checkered and selective information in the public domain and tries to hide behind secrecy in the name of national interest.

The finding that there is no nexus between the FE and tax regulations under most out-remittance sub-heads, and where there is, it is mild; but in none of the situations it is robust, should be enough to ring alarm bells. It follows that there is serious need to reappraise the FE regime, the tax regime covering the FE, and the nexus between the two—within the broader context of the comprehensive cardinal questions regime taking into loop all relevant regulatory outfits.

## SYSTEMIC ABERRATIONS

Pakistan's external sector was given a massive elitist shock in the name of for liberalization, which, in fact, borders on liberalization when the time-tested mechanism of FE management as explained in the above section *Mechanism of Outward Remittances* was pulverized with the promulgation of PERA, 1992, which created a stand-alone parallel system of dealing with FE, its possession, and movement both in and outside the national borders.

***Table 1:*** *The inter FE-tax system nexus is gauged on the scale of "No," "Mild," and "Robust".*

| # | | Transactions | Tax nexus (cross) [132] | | | SBP oversight | |
|---|---|---|---|---|---|---|---|
| | | | *No* | *Mild* | *Robust* | *Approval* | *Reporting* |
| *a.* | *Imports* | | | CNIC/STRN/NTN [13.3]* | | | Yes |
| *b.* | *Commercial remittances* | | | | | | |
| | (i) | Freight and Passage Collections | No | | | | Yes |
| | (ii) | Surplus Passage and Freight Collections by Foreign Airlines | | Yes [14.3(i)(i)] | | | Yes |
| | (iii) | Surplus Passage and Freight Collections by Foreign Shipping Companies | | Yes [14.4(i)(l)] | | | Yes |
| | (iv) | Freight Charges by Freight Forwarders and Consolidators | No | | | Yes (Prior) | |
| | (v) | General Average Payments | No | | | | Yes |
| | (vi) | Operating Expenses of Pakistani Shipping Companies and Airlines | No | | | | Yes |
| | (vii) | Charter of Foreign Ships and Aircrafts | No | | | | Yes |
| | (viii) | Royalty, Franchise and Technical Fees | | Yes [12(v)(c)] | | | Yes |
| | (ix) | Technical Services and Consultancy Agreement of Foreign Technicians | | Yes [13(iii)] | | | Yes |
| | (x) | Remittance by IT Sector | | Yes [14(iii)4] | | | Yes |
| | (xi) | Profits of Foreign Banks | | Yes [15(i)(a)-(c)] | | Yes | |
| | (xii) | Profits of Foreign Companies | | Yes [15(ii)(d)(i)] | | Yes | |
| | (xiii) | Dividend to Foreign Shareholders | | Yes [16(iv)(d)] | | | Yes |
| | (xiv) | Sundry Transactions | No | | | | Yes |
| *c.* | *Insurance business* | | No | | | | Yes |
| *d.* | *Private remittances* | | | | | | |
| | (i) | Transfer of Assets-Foreign National | | Yes [16.1.(ii)] | | | Yes |
| | (ii) | Family Remittances-Foreign National | | Yes [16.6] | | | Yes |
| | (iii) | Sundries; Legacy, Inheritance, Estate | No | | | | |
| | (iv) | Sundry Transactions | No | | | | Yes |
| *e.* | *Travel* | | No | | | | Yes |
| *f.* | *Loans, overdrafts and guarantees* | | No | | | | Yes |

** Foreign Exchange Regulations Manual (as amended from time to time).*

The parallel FE regime created under PERA, 1992, and other support legal infrastructure, practically punctuated the pre-existing regulatory regime on many a count and rendered the country an amphitheater for the FE players, money lenders and tax evaders.

**Private Foreign Currency Accounts Scheme, 1991**

The foreign currency accounts scheme (FCAS) was initially launched in January, 1973, when, in the wake of dwindling exports, FDI, and foreign exchange reserves, PPP Government had decided to lure Pakistani diaspora to place their surplus funds in foreign currency in Pakistani bank accounts. The FCAS went through a few modifications and refinements over the next two decades but it continued to be available only to non-resident Pakistanis. However, in a fundamental policy shift, PML-N government advised SBP to extend the scope of the scheme to resident Pakistanis also; SBP announced the scheme with much fanfare on October 23, 1991 [133]. Janjua posits that the "permission to Pakistani residents to open and maintain these accounts and general permission for credit to these accounts with the proceeds of FEBCs, dollar bearer certificates, travelers cheques, and currency notes was granted as part of the overall package of foreign exchange reforms announced in February 1991" [134]. The culmination of the process came when in the aftermath of the nuclear explosions on May 28, 1998 the FCAS were frozen through an executive order. In the aftermath thereof, as a damage control measure, the Foreign Currency Accounts (Protection) Ordinance (FCAO), 2001, was promulgated to "provide for protection of foreign currency accounts" [135]. The FCAO, except brute immunity from probe into the sources of deposits, and taxation of profits thereon, was loaded with flaunting over-riding effect, secrecy, and

indemnification. Nonetheless, the most inimical dimension of the FCAO was to permit an FCA-holder to "sell, withdraw, remit, transfer, use as security or take out foreign currency therefrom within or outside Pakistan" [136]. Zaidi observes that the FCAO "effectively allows Pakistanis to transfer funds held in foreign currency accounts in any manner and use proceeds to acquire any kind of assets abroad" [137]. The position was further crystalized in 2003, when SBP rescinded the regulations that required every Pakistani citizen to surrender foreign exchange to an AD within the specified timeframe [138].

Although, it was argued that as "Pakistan…liberalized its foreign exchange market on the current account, the divergence between the actual rate and the purchasing power parity exchange rate (or the black market premium) had fallen," [139] yet the FCAS was riddled with downsides. Firstly, it was thoroughly tax-privileged—in terms of waiver from the executive's authority to inquire into the source of financing of these accounts as well as exemption on profits of whatever order [140]. Secondly, since balances held in FCAs were "freely transferable abroad" these accounts could be conveniently used to funnel funds without any check or restriction by the SBP or other government agencies [141]. It is highly uncertain if the remitting ADs even reported to SBP as to how much money was remitted out through the particular accounts. Thirdly, there was no restriction on pulling out foreign exchange from within the banking system, as "there will be no limits on amounts of withdrawal;" [142] this bred current account instability. Fourthly, the FCAS, after becoming available to Pakistan-resident persons duly loaded with impunity from any inquiry or probe, created a haven-like situation inside the country for big-time corruption, money laundering, and organized syndicate crime. It extended brute secrecy onto the entire economic life of the society whereby everything pertaining to foreign exchange or foreign currency was sanctified and equated with foreign remittances to undermine and to scare away any attempts aimed at unearthing syndicated tax evasion and financial crimes. Lastly, it gave traction to the piling up of the external debt as "about half of the public debt was denominated in foreign currency, making the public sector vulnerable to a sudden depreciation of the exchange rate" [143]. It has been contended that "Pakistan's current account deficits sharply widened in the mid-1990s, financed by a large increase in nonresident's foreign currency deposits" [144]. The FCAS continued to enjoy full-scope amnesty until watered down by the Musharraf regime w.e.f. December 16, 1999, [145] where-after it was denied to new FC accounts or the new incremental deposits fed into the old accounts. This arrangement was further reinforced in 2001 [146].

**Protection of Economic Reforms Act, 1992**

In 1992, PML-N government promulgated the Protection of Economic Reforms Act, 1992 (the PERA). The PERA was preamble to "create a liberal environment for savings and investments," and "to provide legal protection to…reforms in order to create confidence in the establishment and continuity of the liberal economic environment" [147]. The "economic reforms" that it looked to protect were "relating to privatization of public sector enterprises, and nationalized banks, promotion of savings and investments, introduction of fiscal incentives for industrialization and deregulation of investment, banking, finance, exchange payments systems, holding and transfer of currencies" [148]. The statute overrode not only all the pre-existing directly relevant laws [149] but also "any other law for the time being in force" [150]. The PERA revolutionized the FE regime in Pakistan by five distinctive features. One, it entitled all Pakistanis whether resident or non-resident in Pakistan and all other persons "to bring, hold, sell, transfer and take out foreign exchange within or out of Pakistan in any form and shall not be required to make a foreign currency declaration at any stage nor shall anyone be questioned in regard to the same" [151]. Two, it extended an absolute "immunity against any enquiry…as to the source of the foreign currency accounts" [152]. Three, the "balances in the foreign currency accounts and income there from" were "exempted from the levy of wealth tax and income tax and compulsory

deduction of zakat at source" [153]. Four, the FE kept in a bank account was given complete secrecy cover [154]. Lastly, it guaranteed that "any financial and contractual commitment made by or on behalf of the Government shall continue to remain in force, and shall not be altered to the disadvantage of the beneficiaries" [155].

Although, the PERA was thoroughly revised in 1999 diluting its adverse implications on some of the aforementioned counts, yet it continued to hover over Pakistan's external sector like a dark spell [156]. Its role as a hole to shift FE out of the country by by-passing SBPs regulatory function, for all practical purposes, was retained. The PERA, 1992 underwent substantial further revision putting curbs on feeding of foreign currency accounts only by tax filers, and limiting the annual amount of inward remittances to US $10,000 by resident taxpayers in 2018, but it continues to generate strong arguments both for and against its very existence [157]. It was authoritatively suggested to "examine whether the capital account convertibility which is assured by allowing residents to hold foreign currency accounts serves national economic interests…because these deposits create serious distortions, relax the constraints by enabling financing of widening current account deficits, create perverse incentives and divert invertible resources from the economy" [158]. The PERA, 1992, continues to be the most controversial economic law in Pakistan.

### Money Exchange Companies

Similarly, the money exchange companies (MECs) may be contributing negatively towards soft out-remittances of foreign exchange from the country. It is a well-known fact that not only that the MECs operate under a diluted FE regime, but also there are severer problems of enforcement. The MECs operate as the front office of the *hundi* and *hawala* business syndicates. The enforcement issues pertain to upfront authorizations, gathering of critical information, and then sharing of that information with the stakeholders. The MECs' role towards facilitation of money laundering, hoarding and exchange rate fluctuations has usually been in the spotlight. If the already existent low or no tax nexus was not enough, the systematic aberrations—the PERA, 1992 and FACO, 2001—ended up creating almost a parallel system—a substantial part of which may be outside not only the FE and tax nexus but also the entire regulatory oversight of the state. Thus, in order to reduce the demand for foreign exchange, the FE–tax nexus would warrant strengthening, as well to restore and establish the fiscal base of Pakistan.

## TAX REGULATORY REGIME

In the sub-continental context, the tax system has always backstopped FE regulations and their enforcement by putting in place an additional filtration mechanism to cover most income-based out-remittances belonging to tax-nonresident persons, but this fact never made into the serious scholarship in the discipline nor was it accorded the importance if deserved in the policy planning circles. This mechanism is in the shape of upfront application of withholding tax, or in the alternative, an express exemption certificate issued after putting such incomes through a legal scrutiny by the tax service. The treatment meted out to the incomes earned by non-residents has depended upon whether they operated through a permanent establishment (PE) or a fixed place of business or without one. Contextually, this is a key question. In the former case, the non-resident income-earners would file their annual tax returns declaring therein Pakistan-source incomes as "if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed" [159]. In the latter case, however, the entire responsibility was assigned to the payer or the remitter, who, in most cases, was made liable to withhold the tax and then remit out the amount. In case the remitter was of the view that the amount was not chargeable to tax locally, he would file an application to the Commissioner divulging therein all relevant information, who would then adjudicate upon the matter keeping in view facts of the case and the applicable law. However, the mere fact that the non-residents operative in an economy creates large amount of opportunities of out-remittance of foreign exchange, the matter

would have warranted a lot deeper dissection, and closer scrutiny. The determination of tax status of any amount being lined up by any resident Pakistani is of equal significance and relevance. This would not be out to place to mention that that both of the regulatory systems, i.e., FE regulations and the tax system, at least in Pakistan's context, have never worked as two components of one organic system, but two completely separate systems operating in absolute isolation—never really speaking to each other.

**Historical Context**

***Income Tax Act, 1922***

The tax system component covering out-remittances as outlined above, traces its origins in the Income Tax Ordinance, 1922 [160]. The colonial British India government was well aware of the importance of preserving the foreign exchange and taxing it under law. This was ordained that any "person responsible for paying any income chargeable under the head 'Salaries' to a person not resident…shall, at the time of payment, deduct income-tax on the estimated income of the assessee under the head in accordance with the provisions" of the law [161]. The law also enjoined upon the tax department to issue "a certificate in writing…in every proper case on the application of the assessee stating that tax may be deducted at the rates specified therein" [162]. Likewise, the "person responsible for paying any income chargeable under the head 'Interest on securities' to a person, whom he has no reason to believe to be resident in the taxable territories, shall, at the time of payment, deduct super tax on the amount of such interest" [163]. In order to cover the rest of the income types, a residual clause was incorporated into the law to the effect that "Any person responsible for paying to a person not resident in the taxable territories, any sum not being 'Interest on securities' chargeable under the provisions of this Act shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct" tax at the applicable rates [164]. Thus, while "salary and interest" were explicitly covered to pass under the withholding axe, through the use of the words "any sum," the law practically extended its nexus to every single amount that arose to a non-resident person and made it liable to pass through the system devised, that is, either pay the tax or seek an exemption certificate. In 1947, the Income Tax Act, 1922, was duly adapted by Pakistan, where-under the tax nexus existing before independence continued to be the same—the payer or remitter being its pivot. This arrangement continued to be in vogue till 1979.

***Income Tax Ordinance, 1979***

The Income Tax Ordinance, 1979, which was promulgated to give effect to the case law that had developed and consolidate a large number of amendments that had been introduced during the intervening six decades. However, the taxation regime governing the non-residents and the consequent out-remittance of foreign exchange continued to remain almost identical. The law unambiguously ordained that any person responsible for paying to a non-resident any sum chargeable "shall…deduct, at the time of payment, tax at the rate specified" [165]. The only exception was in situations wherein the tax department issued a certificate in writing to the effect that the recipient was not liable to tax on that particular amount in Pakistan [166]. The certificate of such nature was to be issued on the application made by the payer where he "intends not to deduct tax." However, wherever the tax department had "reason to believe that the payment is chargeable to tax" under the law, it would "direct the person making the payment to deduct tax from such payment at the rate specified" [167]. Again, the person shouldering the entire responsibility to either withhold tax or seek exemption thereon rested on the payer or remitter.

***Income Tax Ordinance, 2001***

The Income Tax Ordinance, 2001, likewise accords a definite role to the tax administration towards scrutiny of FE lined up for out-remittance. The law, as before, creates a liability on "every person" making a payment outside Pakistan to either withhold a tax at the prescribed rates or produce an exemption certificate in this connection [168]. The statute stipulates that every person making "a payment in full or part…to a non-resident

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person" shall withhold tax at the prescribed rate on account of royalties and fees for technical services; [169] execution of contracts or sub-contracts under a construction, assembly or installation project including the projects for supervisory activities; contract for advertisement services rendered by satellite television channels [170]; insurance or re-insurance premia [171]; advertisements to be relayed from outside Pakistan [172]; production of commercials for advertisement on a television channel or any other media; and any other head not covered in any of the aforementioned categories [173]. The law takes due precautions to exclude an amount that is either taxable in the hands of non-resident person's branch office in Pakistan or it is not taxable in Pakistan due to any other reason [174].

**Enforcement Mechanism**

The statute then moves to operationalize the second strand of the mechanism by saddling the would-be remitter with the liability that if he "intends to make a payment to a non-resident person without deduction of tax" he shall "before making the payment, furnish to the Commissioner a notice in writing setting out (a) the name and address of the non-resident person; and (b) the nature and amount of the payment" [175]. It has further been stipulated that if the "Commissioner has reasonable grounds to believe that the non-resident person is chargeable to tax under this Ordinance in respect of the payment," he may, "by an order in writing, direct the person making the payment to deduct tax from the payment" [176]. The Commissioner is obliged to dispose of such an application "within thirty days" [177]. This is a formidable mechanism of protecting the fiscal base as well as thwarting attempts aimed at siphoning off expensive foreign exchange from Pakistan. But when rolled out into the practical realm, the application of the mechanism suffers infirmities, in that, it was prone to misuse, create abundant opportunities for rent-seeking, and generated only insufficient, incomplete, and times, even incorrect information.

**The Case Study**

In view of the consensus that the process of issuance of exemption certificates was producing below par outcomes on multiple counts, in early 2013, efforts were made to render it transparent and standardized by shifting it from manual to online. For a first step, FBR requested SBP to provide year-wise data of outward remittances so as to stock take and analyze the quantum and trends of out-bound remittances that had or did not have the tax coverage. The data supplied by SBP are tabulated in Table 2.

While contextually imports fell out of the purview of the prevailing tax regime, the outflows taking place on other counts being significant—approximately, US $10 billion annually—the operational mechanics of issuance of exemption certificates were put to a closer internal scrutiny. It was observed that at operational level, the resident person intending to make payment to a non-resident recipient would *manually* issue a notice to the Commissioner divulging therein partial, sketchy, and at times, even incorrect information on a simple page as no prescribed proforma clearly delineating information fields had been put in place for the purpose. The perception built was that the manual system was resulting not only in significant loss to revenue, but also in soft out-flows of precious foreign exchange from the country.

***Table 2:*** *Outward Remittances—FY 2009-2013 (US $ Millions) [178].*

| Head | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013* |
|---|---|---|---|---|---|
| Imports | 31,747 | 31,209 | 35,872 | 40,461 | *39,650* |
| *Commercial Imports* | *10,850* | *8,951* | *9,475* | *9,858* | *9,649* |
| Insurance Business | 133 | 146 | 148 | 279 | *258* |
| Private Transfers | 55 | 60 | 155 | 69 | *70* |
| Travel | 1,002 | 879 | 972 | 1,367 | *1285* |
| *Total* | *43,787* | *41,245* | *46,622* | *52,034* | *50,912* |

**For FY 2013, 10 months data is extrapolated (averaged) over 12 months.*

Thus, finding an urgent need for a complete shift from *manual* to *online* system of issuance of exemption certificates for payments to non-residents, FBR and PRAL [179] actively joined hands to come up with a triple-end workable user-friendly digital solution, which was put to dry-run for 15 days and also shared with SBP and top management of all scheduled banks on June 24-25, 2013, in Karachi. The SBP and all scheduled banks supported the proposed online system.

***Online System***

Although, it was within FBRs' competence to roll out the shift from manual to online, yet anticipating fierce resistance from elitist elements, who could potentially try to halt its implementation, the initiative's ownership was vested in the political leadership, and a Note for Finance Minister was moved and got approved before its roll out [180]. The new system was launched on June 28, 2013, and made effective from July 1, 2013 [181]. The salient features of the new system were reckoned as:

a. "The person intending to make a particular payment would lodge a notice through a prescribed electronic form, inter alia, divulging therein:
    - Total amount involved/nature (category) of income;
    - Full particulars of the payer;
    - Full particulars of the remitting bank;
    - Full particulars of the recipient;
    - Full particulars of the transaction, i.e., performance of the economic cause giving rise to the intended payment;
    - Full particulars of the recipient bank; and
    - Basis/arguments for claiming exemption.
b. Commissioner would make an institutional decision on the notice after making necessary enquiries by officers holding jurisdiction over the case.
c. Commissioner shall make his decision on the request for exemption available online within the prescribed time limit of 30 days.
d. The exemption will be valid for a 30-day period to transact the intended remittance.
e. The payer/remitter will present a copy of the exemption certificate to officer of the designated bank who would online verify its validity and veracity. The exemption certificate will not be available for verification after its pre-determined life of 30-days.
f. Throughout, FBR would virtually monitor the process as regards a notice/application lodged, incremental progress achieved by the Commissioner towards its disposal, due diligence and rigor of analysis conducted, and robustness of arguments/grounds recorded by the Commissioner towards accepting or rejecting the exemption claimed.
g. PRAL, operating as back-end managers of the entire process, would keep storing all data of notices/requests made, exemptions allowed, monies remitted, on person-wise, head-wise, and country-wise basis to be retrieved, analyzed and transmitted internationally as and when required.
h. Although, the head-office maintained its oversight across the exemption lifecycle, yet it would intervene only where it was compellingly felt that a decision had not been made within the time specified or it had not been made in accordance with applicable law" [182].

It was increasingly realized, that since the shift from manual to online saddled the payer or remitter with no additional responsibilities as it was disclosure of complete particulars of transaction were creating strains vis-à-vis the new system.

***Impact of Online System***

The online system, despite resistance, was successfully implemented for over one year—FY 2014 with integrity whereby applications for exemptions lodged on-line, Commissioners accessed them online, exemptions certificates were issued online, and bank managers verified their validity online before actually transacting the remittance. The results that it produced can be analyzed in terms of number of exemptions issued and FE out-remitted.

***Exemptions Issued***

Although, firm year-wise data of exemption certificates prior to the implementation of the

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online system are not available, yet it was reported that approximately about 2000 exemptions on outward remittances were annually processed by the tax department. Against this number, the data of exemptions as generated by PRAL for FY 2014 is portrayed in Table 3.

***Table 3:*** *Outward Remittances—Tax Exemptions Applied/Issued [183].*

| Particulars of exemptions applied | Disposal |
|---|---|
| Total exemptions applied | 1,201 |
| Total exemptions approved | 602 |
| Total exemptions partially approved | 13 |
| Total exemptions rejected | 147 |
| Submitted/pending/not pursued | 437 |

*Source: Pakistan Revenue Automated Ltd.*

The number of exemptions issued was almost cut to one-third. Likewise, the number of applications lodged came down by almost 40 percent. The number of rejected applications signified greater application of mind and due diligence on part of IRS officers in particular view of the fact that the head-office was constantly monitoring and tracking each and every application and its outcome; plausibly took out the rent-seeking factor. A large number of pending applications is indicative of the chance taken by potential remitters but when they were put on notice to divulge all the related particulars, they withdrew from the process.

***Foreign Exchange Remitted***

In order to examine the impact of the online exemption system on the actual FE out-remittance, SBP was requested to provide the relevant data. The data of FE remitted during FY 2014, i.e., after enforcement of the online system as compared with FYs 2009 to 2013 is plotted in Table 4.

This will be seen that reduction on account of commercial remittances, which currently falls within the tax nexus, at approximately US $3,279 million is significant. Interestingly, while outward remittances under all other heads continued to maintain their normal trend or go up, the outflows on account of commercial remittances only nose-dived sharply. Without being mono-causal, the apparent variable that this steep decline could be ascribed to was the introduction of on-line system of exemptions on out-remittances.

***Elitist Reaction***

When traditional tactics like persuasion and lobbying did not work, a systematic two-pronged initiative was launched to seek both judicial and administrative interventions to either have the new online system grounded or modified enough to suit the players in FE out-remittances.

***Judicial Intervention***

In a frontal foray, *M/s Linkdotin Telecom Limited* was pitted to file a Writ Petition in the Lahore High Court agitating that while under the applicable rules [185], it was allowed seven days to deposit the tax amount after its deduction, the new online system of exemptions demanded of it to deduct and pay the tax at the time of payment/remittance of the foreign exchange. This was, on the face of it, the flimsiest ground that could be leveraged to invoke constitutional jurisdiction. Other stock grounds taken to pad up the petition were that the online system "would deprive the Petitioner of…valuable right to deposit the tax within seven days after making the payment," and wherefore "a substantive and proprietary right of the Petitioner shall be denied" [186].

***Table 4:*** *Outward Remittances—FY 2009-2014 (US $ Millions) [184].*

| Head | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013* | FY 2014^ |
|---|---|---|---|---|---|---|
| Imports | 31,747 | 31,209 | 35,872 | 40,461 | 39,650 | 41,596 |
| Commercial imports | *10,850* | *8,951* | *9,475* | *9,858* | *9,649* | *6,370* |
| Insurance business | 133 | 146 | 148 | 279 | 258 | 226 |
| Private transfers | 55 | 60 | 155 | 69 | 70 | 89 |
| Travel | 1,002 | 879 | 972 | 1,367 | 1,285 | 1,058 |
| *Total* | *43,787* | *41,245* | *46,622* | *52,053* | *50,912* | *49,339* |

**For FY 2013, 10-month data extrapolated (averaged) over 12 months.*
*^For FY 2014, 11-month data extrapolated (averaged) over 12 months.*

It was also protested that the online system was "based on mala fide and illegal assumption of power," and that it was inconsistent with fundamental rights. Astonishingly, the Court not only admitted the Petition but also granted interim relief by directing FBR to "treat it as a representation on behalf of the Petitioner and decide the same after granting hearing to the Petitioner" [187]. The Court's mere assumption of jurisdiction on the matter visibly shook the tax administration and weakened its resolve.

***Executive Intervention***

In the 1st week of March, 2014, the Big 4 accounting firms and the Tax Bar Association lodged an identical representation to FBR agitating therein the online system on bizarre grounds to have it dismantled, and continue with the out-remittance spree under thoroughly manipulable regulatory and enforcement regimes. The tool devised to achieve the objective was that the non-resident recipient of foreign exchange should also be allowed to access the tax system—not as a taxpayer but only as a beneficiary—an absolute departure form 100-year-old legal norm. The argument was built on the basis of four real-life cases—MNCs that were earning substantially large sums of incomes in Pakistan, and that only those earning large sums of revenue in Pakistan but were also funneling it out surreptitiously [188].

***Denouement***

After extensive internal bureaucratic wrangling straddling on both for-and-against allowing non-resident FE recipients to apply and seek exemption, FBR issued the high profile clarification on August 11, 2014, stating that "a non-resident person whose income is exempt from Pakistan tax can directly apply and obtain exemption certificate" [189, 190]. This was a departure of a mega proportions from a historically embedded system of enforcement of FE and tax policies through a mutually reinforced nexus. Apart from the fact that elitism was thoroughly at work, but it could have been that FBR's top management taking critical decisions likely to impact the entire economy were not equal to the task and bent upon looking at it in entirely legalist manner [191]. In a bizarre volte face, on September 24, 2014, SBP downward revised the data of outward remittances only on account of commercial imports [192]. The downward revised data is plotted in Table 5.

The downward revision of data could possibly have been purely for professional reasons, but its revisioning only on one strand—commercial remittances—and also for closed years in respect of which data had already been shared with IMF and other stakeholders, left one wondering as to the motives behind the move. The downward revisioning of data produced discrepancy in the figure of total outward remittances affected over the past five years. This discrepancy generated by SBP's revised data sets is plotted in Table 6. The SBP, afterwards, never took pains to explain or reconcile the above discrepancies. After issuance of FBR's clarification, the online system effectively became redundant.

***Table 5:*** *Outward Remittances—FY 2009-2014 (US $ Millions) [193].*

| Head | FY 2009* | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|---|---|---|---|---|---|---|
| Imports | *31,747* | 31,209 | 35,872 | 40,461 | 40, 226 | 41,782 |
| Commercial imports | *10,850* | *5,895* | *6,588* | *6,581* | *6,712* | *6,515* |
| Insurance business | *133* | 146 | 148 | 279 | 260 | 222 |
| Private transfers | *55* | 60 | 155 | 69 | 81 | 108 |
| Travel | *1,002* | 879 | 972 | 1,367 | 1233 | 1,059 |
| Total | *43,787* | *38,189* | *42,852* | *48,757* | *48,512* | *49,686* |

**For FY 2009, data has not been provided vide SBP letter No. DS.BP.32.42/2014-598, dated July 23rd, 2014. The data plotted above was provided by SBP vide their letter No. No.DS.BP.39.01/2013/613, dated June 6, 2013.*

***Table 6:*** *Outward Remittances—FY 2009-2014 (US $ Millions).*

| Head | 2009* | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|---|---|---|---|---|---|---|
| Old total (Table 4) | 43,787 | 41,245 | 46,622 | 52,034 | 50,912 | 49,339 |
| New total (Table 5) | 43,787 | 38,189 | 42,852 | 48,757 | 48,512 | 49,686 |
| Net discrepancy | *0* | *(-) 3,056* | *(-) 3,770* | *(-) 3,277* | *(-) 2,400* | *(+) 347* |

In September, 2014, the architects of the online system were surreptitiously transferred out to give it a complete closure.

***Closure***

In late 2014, FBR rolled out *Iris* portal and the exemption on account of non-residents was practically equated with those of ordinary resident taxpayers—rendering it a free-for-all ecosystem of FE out-remittance, and practically diluting the FE regulations–tax nexus to as feeble a state in which it is presently. FBR also eventually ended up effecting the required amendment in the rules by essentially stipulating that the tax withheld will be credited to the Federal Government "prior to remitting abroad of the amount from which tax is to be deducted or collected," but it was belated as the damage had already been done, and the online system rendered redundant [194]. This is how the saga of the conception, roll-out, implementation, existential struggle, and roll-back of the online system of exemptions to non-residents, having survived for a year, came to forced unnatural demise, and got consigned to the oblivion of history.

**FE Regulations–Tax Nexus: Cardinal Questions Framework**

Thus, in the wake of the conclusion as arrived at through the foregoing analysis—particularly the case study—that the Pakistan's FE regime is in a disheveled state both at the policy and process levels, it can be unequivocally held that there is a definite value in creating a robust nexus between the FE and tax regulatory regimes—and going forward, amongst all regulatory institutions. Then it logically follows that the cardinal questions—devised in the section *Cardinal Questions*—are the broader filter through which all out-remittances be those for commercial imports, raw materials, monies earned by non-residents, resident persons making investments abroad, Pakistani nationals liquidating their capital assets and relocating them abroad, and needed or luxurious expenditures being undertaken by the rentier elite, need to be processed with varying degree of applicable due diligence and scrutiny—lax for import-related remittance and strict for ultimate repatriations. At some level, the approach may prove to be a game-changer to preserve ever-dwindling foreign exchange, curb mis-invoicing and overcome the offshore problem—three of the core problems of the Pakistani economy.

## CONCLUSION

The paper set before itself the agenda of exploring into the insuperable external sector fragility—particularly from the point of view of the debit side. It started off by hypothesizing that Pakistan's perennial BOP blues, in part, could be explained in terms of an elitist FE policy, and its sub-optimal execution in isolation of other key regulatory outfits, e.g., the tax system—that had an equally important role to play towards protecting the fiscal base of the state as well the hard-earned FE from soft dilution. A set of cardinal questions that any functional state must address and answer before transacting any out-ward remittance, were devised. While arguing that it was practically not possible for any single institution to address all question, and wherefore the state's entire institutional framework had to operate in unison, the paper reduced its focus only to one such system—the tax system. After appraising the FE regulations and the tax system component dealing with external sector of the economy, it was emphatically brought out that the tax nexus on most FE out-remittances was either non-existent or it was too mild to create an impact; hence, the need for a comprehensive alternative cardinal questions based framework.

The foregoing debate helps draw a few succinct summations and advance a policy proposal. One, the two key institutions of the state—FBR and SBP—dealing with fiscal and monetary matters, respectively—operate in their silos and end up producing below par outcomes for the economy. Two, there is data-deficit with regard to the underlying pillars of FE management constraining informed debate and research and creating a shady corridor of confidentiality in which elites conveniently have a go at policy formulation and enforcement. Three, there is a latent potential and urge on part of the state institutions to cooperate to improve

regulation in Pakistan, as also suggested by the case study, but no sooner counter-reaction comes, the institutions crumble under pressure indicating strong elitist hold on the system. Four, lack of coordination and cooperation mechanisms apart, the legal systems of both SBP and FBR, and their operational mechanics are archaic and out of sync not only with each other but with the realities of a globalized economic order. Five, the elites' centrifugal overtures are rational actor choices and need appreciation at a deeper and complex level in that, unless a wholesome organic society is created, howsoever strong or ruthless regulatory regime might be, FE would continue to find ways and means to get funneled out of the country. Six, a whole-of-the-government approach, both horizontally and vertically, would be a pre-requisite to better manage external sector as various institutions operating in a cylindrical fashion would continue to produce deficits on expected outcomes. Last, there is a dire need for policy-relevant research to systematically analyze as to how FE policy and enforcement are being impacted by other policies and institutions as rarified policy planning is not compatible with the complex globalized economy. The only policy proposal that cries out of these summations is that an inter-ministerial, inter-institutional commission with clear terms, and timelines could be formed to critically appraise all laws, policies, and regulations that directly or indirectly concern the FE management in Pakistan, and the mandate to eliminate divergences and forge convergences, and adjust economically optimal degree of tax nexus.

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27. For instance, any argument build against the whitening scheme under section 111(4) of the Income Tax Ordinance, 2001, has strategically been equated with putting curbs on foreign remittance.
28. GOP, The Foreign Exchange Manual, (Karachi: State Bank of Pakistan, 1947).
29. Para 5 Mode of Remittances; Para 7 Prescribed Application Forms; Para 8, Applications by Letters; Para 9 Applications to be submitted to the State Bank/SBP-Banking Services Corporation only through an Authorized Dealer; Para 10 Forwarding Applications to the State Bank /SBP-Banking Services Corporations; Para 11 Processing of Approved Form etc. Para 12 Permits for Recurring Remittances; Para 13 Effecting Remittances against Permits; Para 14 Period of validity of approval by the State Bank; Para 15 Release of Foreign Exchange for Travel Abroad; Para 16 Processing of Approvals given on one Authorized Dealer's Form by another Authorized Dealer; Para 17 Reporting Remittances; Para 18 Cancellation of Outward Remittances; and Para 20

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Utilization of Exchange for the purpose it is obtained.

30. Applications prescribed under Chapter 10, Para 7 of the Manual are Form I, Form T-I, and Form M.
31. Chapter 10, Para 7(ii) of GOP, The Foreign Exchange Manual.
32. Chapter 10, Para 7(ii) of ibid.
33. Chapter 10, Para 10 of ibid.
34. Chapter 10, Para 10 of ibid.
35. Chapter 10, Para 11 of ibid.
36. Chapter 10, Para 14 of ibid.
37. Chapter 10, Para 13 of ibid.
38. Chapter 10, Para 17 of ibid.
39. Chapter 10, Para 20 of ibid.
40. Pakistan started implementing IMF-sponsored Balance of Payments and International Investment Position Manual (BPM6) during FY 2011, which was to be completed in three phases and in three years. Conceptually, BPM6 maintains the overall framework of the methodology of the 5th edition of the Manual (BPM5). BPM6 deepens the hormonization of the IMF's external sector statistics' recommendations with the update of the System of National Accounts, and the international standards in the area of direct investment and other macroeconomic statistics.
41. BPM6 classifies Imports as Current Account-Goods.
42. Chapter 13, Para 1 of GOP, The Foreign Exchange Manual.
43. Chapter 13, Para 3 of ibid.
44. Alternative distinctive numbers include Sales Tax Registration Number (STRN), National Tax Number (NTN), and Computerized National Identification Card (CNIC).
45. Chapter 13, Para 4 of GOP, The Foreign Exchange Manual.
46. Chapter 13, Para 4 of ibid.
47. Chapter 13, Para 17(ii) of ibid.
48. Chapter 13, Para 23 of ibid.
49. Chapter 13, Para 6 of ibid.
50. Chapter 13, Para 8(i) of ibid.
51. Chapter 13, Para 8(ii) of ibid.
52. Chapter 13, Para 8(iv)(v)(vi) of ibid.
53. Chapter 13, Para 14 of ibid.
54. Chapter 13, Para 17(i) of ibid.
55. Chapter 13, Para 30(i)(a) of ibid.
56. Chapter 13, Para 30(i)(b) of ibid.
57. Chapter 13, Para 7 of ibid.
58. Chapter 13, Para 7 of ibid.
59. Chapter 13, Para 17(ii) of ibid.
60. Chapter 13, Para 19 of ibid.
61. BPM6 classifies Surplus Passage & Freight Collections by Foreign Airlines as Current Account-Services-Transportation-Air-Passenger and Current Account-Services-Transportation-Air-Freight.
62. Chapter 14, Para 3(ii) of GOP, The Foreign Exchange Manual.
63. Chapter 14, Para 3(ii) of ibid.
64. Chapter 14, Para 3(i)(i) of ibid.
65. Section 7(1)(a)&(b) of Pakistan, The Income Tax Ordinance, 2001, (Islamabad: FBR, 2001).
66. First Schedule, Part I, Divion V of ibid.
67. First Schedule, Part I, Division IX of ibid.
68. Section 236B of ibid.
69. First Schedule, Part IV, Division XX of ibid.
70. Section 236L of ibid.
71. Section 3 of———, The Federal Excise Act, 2005, (Islamabad: Federal Board of Revenue, 2005).
72. Muhammad Ashfaq Ahmed, U.N. M.T.C: Was the Source Rule Surrender on Article 8 a Blunder? The Case Study of Pakistan, *Intertax* 48, no. 1 (2020).
73. See for a detailed analysis ibid.
74. BPM6 classifies Surplus Passage & Freight Collections by Foreign Shipping Companies as Current Account - Services - Transportation-Sea-Passenger and Current Account-Services-Transportation-Sea-Freight.
75. Chapter 14, Para 4(ii) of GOP, The Foreign Exchange Manual.
76. Chapter 14, Para 4(ii) of ibid.
77. Chapter 14, Para 4(i)(l) of ibid.
78. Section 7(1)(a)&(b) of Pakistan, The Income Tax Ordinance, 2001.
79. First Schedule, Part I, Divion V of ibid.
80. See for a detailed analysis Ahmed, U.N. M.T.C: Was the Source Rule Surrender on Article 8 a Blunder? The Case Study of Pakistan.
81. Chapter 14, Para 4(i) & (iii) of GOP, The Foreign Exchange Manual.
82. BPM6 classifies Freight Charges by Freight Forwarders & Consolidators as

Current Account-Services-Transportation-Air-Freight and Current Account-Services-Transpiration-Sea-Freight.
83. Chapter 14, Para 5(i) of GOP, The Foreign Exchange Manual.
84. BPM6 classifies Charter of Foreign Ships and Aircrafts as Current Account-Services-Transportation-Sea/Air (with crew) and Current Account-Services-Other Business Services-Operation Lease (without crew).
85. Chapter 14, Para 8(ii) of GOP, The Foreign Exchange Manual.
86. Chapter 14, Para 8(1) of ibid.
87. Section 152(2) read with First Schedule, Part III, Division II of Pakistan, The Income Tax Ordinance, 2001.
88. BPM6 classifies Remittance of Royalty/ Franchise & Technical Fees as Current Account-Services-Royalty, Frachnise & Technical Fees.
89. Chapter 14, Para 12(i)(a) of GOP, The Foreign Exchange Manual.
90. Chapter 14, Para 12(i)(b) of ibid.
91. Chapter 14, Para 12(i) of ibid.
92. Chapter 14, Para 12(ii)(a) of ibid.
93. Chapter 14, Para 12(ii)(b) of ibid.
94. Chapter 14, Para 12(v) of ibid.
95. Chapter 14, Para 12(iii)(a)(b)(c) of ibid.
96. Chapter 14, Para 12(v) of ibid.
97. Section 152(1) read with First Schedule, Part I, Division IV of Pakistan, The Income Tax Ordinance, 2001.
98. Section 6 of ibid.
99. Chapter 14, Para 12(5)(c) of GOP, The Foreign Exchange Manual.
100. Chapter 14, Para 12(5)(c) of ibid.
101. See section 2(23) and (54) of Pakistan, The Income Tax Ordinance, 2001.
102. BPM6 classifies Technical Services, Consultancy Services, and Foreign Technicians as Current Account-Services-Other Business Services-Technical, Trade related and other business services.
103. Chapter 14, Para 13(i) of GOP, The Foreign Exchange Manual.
104. Chapter 14, Para 13(ii) of ibid.
105. Chapter 14, Para 13(iii) of ibid.
106. BPM6 classifies Remittance by Information Technology Sector as Current Account-Services-Telecommunications, computer and information services.
107. Chapter 14, Para 14(i) of GOP, The Foreign Exchange Manual.
108. Chapter 14, Para 14(ii)(4) of ibid.
109. BPM6 classifies Profits of Foreign Banks as Current Account-Primary Income-Direct Investment.
110. Chapter 14, Para 15(i)(c)(d) of GOP, The Foreign Exchange Manual.
111. Chapter 14, Para 15(ii)(e)(f) of ibid.
112. Chapter 14, Para 15(iii) of ibid.
113. BPM6 recognizes Dividend to Foreign Shareholders as Current Account-Primary Income-Direct Investment and Current Account-Primary Income-Portfolio Investment.
114. Chapter 14, Para 16(i) of GOP, The Foreign Exchange Manual.
115. Chapter 14, Para 16(iii)(c) of ibid.
116. Chapter 14, Para 16(iv)(d) of ibid.
117. Section 5 read with First Schedule, Part I, Division III of Pakistan, The Income Tax Ordinance, 2001.
118. Section 152(5) of ibid.
119. BPM6 classifies Sundry Transactions as Current Account-Services-Other Business Services.
120. Chapter 14, Para 6, 7, 9, 10, 11, 17, 18(i)&(ii), 19, 20, 21, and 22(i)&(ii) of GOP, The Foreign Exchange Manual.
121. BPM6 recognizes Insurance Business as Current Account-Insurance and Pension Services.
122. Chapter 15, Para 1 of GOP, The Foreign Exchange Manual.
123. Chapter 15 of ibid.
124. Section 152(1A) read with First Schedule, Part II, Division III of Pakistan, The Income Tax Ordinance, 2001.
125. BPM6 broadly recognizes Private Remittances as Current Account-Secondary Income-Personal Transfers(Workers' remittances), and Current Account-Secondary Income-Personal Transfers.
126. Chapter 16, Para 1 of GOP, The Foreign Exchange Manual.
127. Chapter 16, Para 1(ii) of ibid.
128. Assessment orders are framed far and few in select number of cases that get selected for audit.
129. Chapter 16, Para 2, 3, 4, 5, 6, 7, 10, 11, 13, 14, 15, 17, 18, 19 of GOP, The Foreign Exchange Manual.

130. BPM6 classifies Travel as Current Account-Services-Travel.
131. Chapter 17, Para 5, 7, 21, 22, 23, 24, 26, 27, 30, 38, 45 of GOP, The Foreign Exchange Manual.
132. The tax nexus implies enforcement effect induced and produced through mutually reinforcing coordination and interdependence. No is indicative of no cross-referencing with regard to that particular out-remittance head (or sub-head); Mild implies some oblique mention; and Robust denotes reporting of the transaction by the remitting bank to the remitter's tax office.
133. The Private Foreign Currency Accounts Scheme was launched vide SBP Circular No. 32, dated February 23, 1991. The substantive part of the Circular reads: 1. As Authorized Dealers are aware the Government of Pakistan have decided to permit Pakistani nationals resident in Pakistan also to open and maintain foreign currency accounts with the banks in Pakistan. The Authorized Dealers are, therefore, allowed to open such accounts. Such accounts may be fed by remittances received from abroad, travelers cheques, foreign currency notes, and foreign exchange generated by encashment of Foreign Exchange Bearer Certificates. No question will be asked about the source of acquisition of such foreign exchange. 2. Foreign exchange released from Pakistan for any purpose and foreign exchange representing sale proceeds of goods exported from Pakistan, earnings of the residents on account of services, earnings/profits of the overseas offices/branches of Pakistani firms/companies and banks etc. will not be eligible for credit to such accounts and the residents will continue to be subject to the existing legal requirement of surrender of such funds to an Authorized Dealer within the prescribed time limit. 3. These foreign currency accounts will be treated in the matters of exchange control in the same manner as the foreign currency accounts of non-residents.
134. Muhammad Ashraf Janjua, Pakistan's Liberalization of the External Sector, in *Financial Sector Reforms, Economic Growth, and Stability: Experiences in Selected Asian and Latin American Countries*, ed. S. Faruqi & Bery S. K. (Washington D.C.: World Bank, 1994).
135. Preamble to Pakistan, The Foreign Currency Accounts (Protection) Ordinance, 2001, (Islamabad: Ministry of Finance, 2001).
136. Section 3 of ibid.
137. Zaidi, *Panama Leaks: A Blessing in Disguise - Offshore Assets of Pakistani Citizens*: 73.
138. The SRO No.1016(1)/79 dated October 17, 1979 entitled Repatriation of Foreign Exchange Holdings by Residents was rescinded vide SRO No. 984(1)/2003, dated October 11, 2003.
139. R. Faruqee, *Strategic Reforms for Agricultural Growth in Pakistan* (World Bank, 1999). 24.
140. The amnesty from probe into the sources of financing the accounts opened and maintained under the FCAS, 1991, was extended through insertion of Clause (6A) in Part IV of Second Schedule to the Income Tax Ordinance, 1979, vide S.R.O. 219(I)/91, dated March 16, 1991, which read: The provisions of section 13, Chapter XI, or Chapter XII shall not apply in respect of any amount of foreign exchange deposited in a private foreign currency account held with an authorised bank in Pakistan in accordance with the Foreign Currency Accounts Scheme introduced by the State Bank of Pakistan. Subsequently, vide S.R.O. 1344(I)/99, dated December 16, 1999, a proviso thereof was added, which read: Provided that the exemption under this clause shall not be available in respect of any incremental deposits made on or after the 16th day of December, 1999 in such accounts held by a resident person or in respect of amounts deposited in accounts on or after the said date by such person.
141. Janjua, Pakistan's Liberalization of the External Sector, 147.
142. Ibid.
143. F. Sturzenegger and J. Zettelmeyer, *Debt Defaults and Lessons from a Decade of Crises* (MIT Press, 2006). 134.

144. Ibid.
145. The amnesty was withdrawn vide S.R.O. No. 1344(I)/99, dated December 16, 1999.
146. Pakistan, The Foreign Currency Accounts (Protection) Ordinance, 2001.
147. Preamble to ———, The Protection of Economic Reforms Act, 1992, (Islamabad: M/O Finance, 1992).
148. Section 2(b) of ibid.
149. The laws that were specifically overridden were (a) the Foreign Exchange Regulations Act, 1947; (b) the Customs Act, 1969; and (c) the Income Tax Ordinance, 1979.
150. Section 3 of Pakistan, The Protection of Economic Reforms Act, 1992.
151. Section 4 of ibid.
152. Section 5(1) of ibid.
153. Section 5(2) of ibid.
154. Section 5(3) of ibid.
155. Section 10 of ibid.
156. ———, The Protection of Economic Reforms (Amendment) Ordinance, 1999, (Islamabad: Ministry of Finance, 1999).
157. The PERA, 1992 was amended through the Finance Act, 2018.
158. Ishrat Husain, *Dollars, Debt and Deficits: Reform and Management of Pakistan's Economy* (Karachi: Vanguard, 2004). 182.
159. Article 7(2) of OECD, *OECD Model Tax Convention on Income and on Capital* (Paris: OECD Publishing, 2017).
160. The British Government's Income Tax Ordinance, 1922, was adapted by Pakistan in 1947. The same nomenclature, however, continued to be in vogue.
161. Section 18(2B) of Pakistan, The Income Tax Act, 1922, (Karachi: CBR, 1947).
162. Section 18(2B) of ibid.
163. Section 18(3A) of ibid.
164. Section 18(3B) of ibid.
165. Section 50(3)(a) of ———, The Income Tax Ordinance, 1979, (Islamabad: CBR, 1979).
166. Ibid.
167. Section 3(d) of ibid.
168. Section 152 of ———, The Income Tax Ordinance, 2001.
169. Section 152(1) of ibid.
170. Section 152(1A) of ibid.
171. Section 152(1AA) of ibid.
172. 152(1AAA) of ibid.
173. Section 152(2) of ibid.
174. Such exclusions are listed in section 152(3)&(7) of ibid.
175. Section 152(5) of ibid.
176. Section 152(6) of ibid.
177. Section 152(5A) of ibid.
178. The data was supplied vide SBP's Letter No.DS.BP.39.01/2013, dated June 6, 2013.
179. Pakistan Revenue Automation Limited - the IT arm of the tax administration.
180. Note for the Minister for Finance entitled Introducing Online System of Issuance of Exemptions Certificates on Payments to Non-Residents - Approval Regarding, bearing F.No.3(61) Int. Taxes/2013, dated February 25, 2013. Finance Minister accorded approval to the proposal on February 26, 2013.
181. FBR's Circular No. 5 of 2013, dated June 28, 2013. [fbr.gov.pk/Orders/Income-Tax-Circulars/231]
182. FBRs' Circular No. 5 of 2013, dated June 28, 2013.
183. The data generated and supplied by PRAL in July, 2014.
184. The data for FY 2009-13 was supplied by SBP vide No.DS.BP.39.01/2013/613, dated June 6, 2013.
185. Rule 43(b) of Pakistan, The Income Tax Rules (2002).
186. Linkdotin Telecom Ltd Vs Federation of Pakistan - Writ Petition No. 30164/2013, dated 20.12.2013.
187. Linkdotin Telecom Ltd Vs Federation of Pakistan - Writ Petition No. 30164/2013, dated 23.12.2013.
188. The five cases were (i) Federal Express; (ii) SWIFT; (iii) Sofia B.V.; (iv) Proctor & Gamble; & (v) WIS Telecom.
189. FBR's Clarification No.4(1)Int. Taxes-Ops/2013-114203-R, dated August 11, 2014, entitled Payment to Non-Residents - Exemption/Low Rate Certificate - Circular No. 5 of 2013 - Online Application by Recipient - Whether Recipient Can Apply for Exemption: Recipient Not Covered by Circular No. 5 of 2013 and Section 152.

190. Not unexpectedly, the Clarifications was also routed to President, Karachi Tax Bar Association, with reference to his letter No. KTBA/2014/638, dated March 3, 2014; as well as to Chartered Accounts (Big 4) firms (i) PWC; (ii) Deloitte; (iii) Ernst & Young; and (iv) KPMG with reference to their letter dated March 5, 2014. The fact that both the representations were a ditto copy of each other, and that those were filed simultaneously, gives interesting insights into how tax law fraternity operates in Pakistan to influence tax policy formulation.
191. Muhammad Ashfaq Ahmed, Pakistan's Governance Goliath: The Case of Non-Professional Chairman, F.B.R., *Pakistan Development Review* 55, no. 4 (2016).
192. SBP's letter No.DS.BP.32.42/2014-739, dated September 24, 2014.
193. SBP letter No.DS.BP.32.42/2014-739, dated September 24, 2014.
194. Rule 43(b) of Pakistan, The Income Tax Rules .inserted vide SRO 255 dated April 12, 2017.

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