



**Cellular Operators Association of India**

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**COAI's PRE BUDGET  
MEMORANDUM – 2009-10**

**November 2008**



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## I. RATIONALIZATION OF LEVIES

Currently, telecom industry is subject to service tax, licence fees including universal service obligation fees, spectrum charges. Besides, the states levy additional taxes such as Octroi, VAT, stamp duty, entry tax and levies on towers.

The total of all the above levies on telecom industry works out to 30 percent of their total revenues, which is one of the highest in the world. Telecom Industry in other developing countries like Malaysia, Sri Lanka and Pakistan pay less than 7 percent and in China it is around 3%.

	Pakistan	Sri Lanka	China	Malaysia	India
<b>Regulatory Charges</b>	<b>%age of revenue</b>	<b>%age of revenue</b>	<b>%age of revenue</b>	<b>%age of revenue</b>	<b>%age of revenue</b>
<b>Service Tax, GST</b>	GST	VAT	3%	5%	12.36% Service Tax
<b>License Fee</b>	0.5% + 0.5% R&D	0.3% turnover (t.o.) + 1% of capital invested (inv)	Nil	0.5%	6% to 10 %
<b>Spectrum Charges</b>	Cost recovery	~ 1.1% of t.o.	~ 0.5%** (China Mobile)	Nil	2% to 6% + 2.9% for M/W access and backbone
<b>USO</b>	1.5%	Nil (only on ISD calls)	Nil	1%	5% included in license fees
<b>Total Regulatory Charges</b>	<b>2.5% + GST + cost recovery</b>	<b>=1.3% t.o. + 1% inv + VAT</b>	<b>~ 0.5% + 3% (TAX)</b>	<b>6.5%</b>	<b>24% to 32%</b>

\* Backbone spectrum charges extra GST – Goods & Service Tax

i. \* Estimated from spectrum fees & revenue of China Mobile

(Source: TRAI Spectrum Policy Recommendations, 13<sup>th</sup> May, 2005 & COAI)

In the past, industry had represented before Ministry of Finance for rationalization of levies on telecom industry.

While presenting the Finance Bill 2007, Finance Minister had made the following remark in Paragraph 159 of his speech which is reproduced below:



*“The telecommunications industry has repeatedly requested that the multifarious taxes, charges and fees applicable to the industry should be unified and a single levy on revenue should be collected. The request merits consideration. Hence, I propose to request the Department of Telecommunications to constitute a committee to study the present structure of levies and make suitable recommendations to Government.”*

We appreciate that the Committee was formed and deliberated on the above issues. However, we believe that further steps are required for rationalization of levies at central as well as state level so as to reduce the cost of services.

- **RELIEF SOUGHT BY COAI:**

***We request you to rationalize multi levies currently being imposed on the telecom sector.***



## II. DIRECT TAXES

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## **1. Tax benefit under section 80-IA not available to companies undergoing amalgamation or demerger after 31.3.2007**

- **Present Scenario:**

The existing provisions of section 80-IA provide for 100% deduction for ten years in respect of profits and gains of certain undertakings or enterprises engaged in the business of development, operation and maintenance of infrastructure facility, industrial parks and special economic zones or generation, distribution or transmission of power, and similar benefit is proposed for laying and operating a cross-country natural gas distribution network, including gas pipelines and storage facilities being an integral part of the network, etc.

Sub-section (12) of the said section 80-IA, inter-alia, provides that where any undertaking of an Indian company which is entitled to the deduction under the said section is transferred before the expiry of the period specified therein, to another Indian company in a scheme of amalgamation or demerger, the provisions of the said section 80-IA shall apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

Union Budget of 2007 -2008, inserted a new sub-section (12A) in section 80-IA so as to provide that the **provisions of sub-section (12) shall NOT apply to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger after 31.3.2007.**

This amendment is effective from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years.

- **Adverse Impact**

- **Denial of tax holiday benefit on mergers / amalgamations of telecom companies is a retrograde step.**
- This step will go against the expansion of affordable telecom service in India.
- This step could **result in confusion and disputes** on reorganization of telecom companies in the future.
- Because of the above step, the expansion by the telecom operators by way of acquisitions is likely to become tax inefficient.

- **RELIEF SOUGHT BY COAI:**

***Tax holiday benefits in case of mergers/ amalgamations should be continued.***

***The position, as was, prior to the announcement of Union Budget 2007 – 08 should be maintained.***

***Section 80 – IA benefits should be available to companies undergoing amalgamation or demerger after 31.3.2007***



## 2. Tax Holiday under Section 80-IA

- **Present Scenario:**

Under existing provision, to avail this exemption services should commence before 1.4.2005.

Present clause (ii) of sub-section 4 of section 80IA states' any undertaking which has started or starts providing telecommunication services..... on or before the 31<sup>st</sup> day of March, 2005'

- **COAI RECOMMENDATIONS:**

*For the new licences issued, this period should be extended upto 1.4.2010.*

*Proposed clause (ii) of sub-section 4 of section 80IA should therefore state that any undertaking which has started or starts providing telecommunication services... on or before the 31<sup>st</sup> day of March, 2010.*

- **Benefits:**

- This would greatly enhance viability of cellular projects. This would also go a long way in enabling companies to achieve financial closure.
- It will help in providing level playing field for all telecom operators who have been issued licenses by the Government at different times from 1994 onwards till date.
- As the projects become viable and the cellular industry grows, the **Government would not only derive benefits from higher tax revenues but also from the resultant economic growth.**



### 3. Deduction in respect of Section 80-IA

- **Present Scenario:**

As per Sub section 2A of Section 80 IA, a telecom operator is entitled to 100% exemption on taxable profits for 5 years and thereafter 30% exemption on profits of next 5 years during the initial 15 years from the date of commencement of commercial operation.

However, for **other infrastructure** sectors as defined under section 80 IA exemption is available to the extent of 100% for the full term of 10 years in succession and these 10 years can be opted from the block of 20 years.

- **RELIEF SOUGHT BY COAI:**

Compared to other infrastructure sectors such as power, the telecom sector has been growing at a much faster pace and has significantly contributed to economic growth.

Therefore, telecom sector should be given equal importance and should be treated at par with other infrastructure sectors such as power. Benefits applicable to power should be extended to telecom as well.

***The period during which 80 IA can be claimed by the telecom operators should be extended to 20 years in place of existing 15 years.***

➤ Telecom operators have incurred heavy business losses and significant tax depreciation on account of capitalization in its initial years due to which 80IA benefits have not been triggered by many operators till now, which is almost 10 years since the licenses were granted.

***100% exemption for successive 10 years out of the 20 years.***

➤ As significant capital investment and proliferation in rural area is envisaged, tax depreciation is anticipated to be high in the coming years as well.

- **Benefits:**

➤ This step will **result in higher disposable funds for reinvestment in the business.**

➤ This will thus enable faster expansion of service thereby resulting in higher revenues for the service providers.

➤ **Therefore any measure that leads to expansion of service will also result in much higher tax revenues for the Government.**



#### 4. Requirement of PAN/ Form 60/61

- **Present Scenario:**

The total number of telephone connections in the country has reached nearly 335 million as on end July 2008. Out of which, the wireless segment forms almost 88% of the market share and the total wireless subscriber base is over 300 MN subscribers.

Mobile tele-density has increased exponentially and today almost one in every third Indian has access to a telephone.

The affordability of mobile phone has helped in spreading mobile services rapidly across all the strata of the society. The maximum gainers have been the small businessmen and vendors like, vegetable vendors, barbers, electricians, plumbers, etc., who have witnessed significant rise in their businesses owing to the availability of very affordable mobile service. Low tariffs, low cost handsets and innovative schemes by Service providers like micro-prepaid and lifetime packages have led an increase in the usage of mobile phone by the low-end subscribers.

In this regard, it is pertinent to note many of these low-end subscribers like, electrician, plumbers, vegetable vendors are NOT income tax assesses. The requirement of quoting PAN number or the need to submit a declaration in Form 60/61 as per the rule 114 B of the Income Tax Act becomes an inhibitor/hurdle for spread of service to these strata of the society. This also creates administrative problems for the service providers and in certain cases it may lead to these low-end subscribers form being deprived of the service.

- **RELIEF SOUGHT BY COAI:**

***In light of the above, the requirement of quoting the PAN number at the time of taking a mobile connection, as per the Rule 114 B of the Income Tax Act has become redundant and should be dropped.***



## 5. Availability of MAT credit in case of amalgamation

### ▪ Present Scenario:

Currently, while the intention seems to be that MAT credit of amalgamating company should be available to amalgamated company, section 115JAA does not specifically covers the case of amalgamation i.e. whether MAT credit of amalgamating company would be available to amalgamated company.

Due to this ambiguity, it is possible that department may dispute availability of MAT credit of amalgamating company in the hands of amalgamated company.

### • Adverse Impact

- **Denial of MAT credit benefit on mergers / amalgamations would be a retrograde step.**
- This step will go against the expansion of affordable telecom service in India.
- This step could **result in confusion and disputes** on reorganization of telecom companies in the future.
- Because of the above step, the expansion by the telecom operators by way of acquisitions is likely to become tax inefficient.

### • RELIEF SOUGHT BY COAI:

***Specific amendment in section 115JAA be made covering the case of amalgamation and accordingly, allowing MAT credit of amalgamating company to amalgamated company.***



### III. INDIRECT TAXES

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## 1. Levy on Handsets

- **Present Scenario:**

In the Union Budget of 2008 -2009 National Calamity Contingent Duty (NCCD) of 1% currently leviable on Polyester filament yarn has been withdrawn.

NCCD at the rate of 1% has been imposed on mobile phones. On imported mobile phones, this duty shall be levied as additional duty of customs (SAD). This duty will not only increase the prices of handsets, but will also lead to lot of administrative work and burden. Since the process will require a lot of complexity in terms of paper work it will thus increase the administrative cost.

- **Adverse Impact**

- India is a very **price sensitive market which is driven by affordability of service**. To ensure spread of service, it is **important to have as low entry barrier** as possible. **This is especially true for the RURAL MARKETS.**
- **This additional levy will go against the key objective of the Government which has been to ensure fast spread of affordable connectivity to the rural areas.**
- Since the levy of this duty will involve complexities and burden in terms of administrative work, this duty will increase the prices of handsets. **This levy will ONLY increase the entry barrier for low end customers.**
- The additional cost involved in the administrative processes will eventually be passed on to the mobile phone buyers.
- Thus , while the **need of the hour was to LOWER THE ENTRY BARRIER** for the subscriber, **this levy will only increase the entry barrier for all subscribers, including the rural subscribers.**

- **RELIEF SOUGHT BY COAI:**

*So as to ensure speedy spread of service, especially to the rural areas, the duty which has been imposed on handsets (NCCD & SAD) on mobile handsets should be withdrawn.*

*Further, the additional duty on mobile handsets should be reduced to NIL.*



## 2. Levy of 4% Additional Duty of Customs (SAD)

- **Present Scenario:**

The Indian Government has fulfilled its commitments to the WTO by bringing down the basic customs duty (BCD) on IT/ Telecom products to zero.

Pursuant to this, the Union Budget 2005-06 had exempted customs duty on specified items covered under the Information Technology Agreement (ITA). BCD has been removed on items covered under the Information Technology Agreement (ITA).

However, to compensate for the internal taxes like sales tax, proposed State VAT, central sales tax, which apply to sale, purchase or transportation of goods in India, **an additional duty of customs (SAD) of 4% has been levied** on ITA bound items which includes telecom equipment like MSC, BTS/ BSC, HDSL/DWDM/ Routers, ATM/Frame Relay/Ethernet Switch etc.

The SAD of 4% can be availed as credit against payment of excise duty on finished products and NOT against output service tax liability. Manufacturers are entitled to avail credit of this SAD for payment of excise duty on their finished goods. However, telecom operators being service providers are NOT eligible to avail credit of this 4% ADC. Hence, the 4% SAD would be an added cost on the telecom service providers.

***It may be appreciated that Microwave Equipment, both backbone and access, is integral to Cellular Mobile Network and therefore increase in cost of these items would translate into an increased cost of service for the subscribers and hence go against the objective of speedy spread of affordable service.***

We believe that the **intention of the SAD is not to increase the cost of service, but to provide level playing field, which is why the facility of set-off has been provided.**

In this regard we would believe that **cellular service providers should be equally entitled to avail of the credit facility as, in case of cellular service providers, the finished product is airtime and the tax paid on this product is service tax.**

It is thus **submitted that to ensure continuing affordability of service, the SAD paid should be allowed to be availed as credit against payment of service tax liability** of cellular mobile service providers.

Alternatively, it should be suitably reduced in a phased manner like Central Sales Tax rate which is currently 2% on telecom network equipments. It is expected that by 2010, Central Sales Tax rate would become zero to bring Goods and Services Tax (GST) into force.

- **RELIEF SOUGHT BY COAI:**

***It is requested that a suitable notification be issued to allow set off of as additional duty of customs (SAD) against output service tax liability.***

**OR**

***It is requested that it should be suitably reduced in a phased manner like Central Sales Tax rate.***



### 3. Exemption to Optical Fibre Cables

- **Present Scenario:**

Optical fibre is a very key component in telecom and many of the service providers import optical fibre cables which are used exclusively for expansion of telecom service. Optical fibre cables are the backbone for providing telecom, internet and broadband services to millions of customers in India. Telecom operators till now have laid about 700,000 kms of optical fibre cables, and this is growing at a rapid pace.

Optical fibre cables are classifiable under the Customs Tariff heading 8544 7090 and the rate of customs duty applicable to this sub -heading is nil.

In terms of the Information Technology Agreement (ITA) entered into by India with other countries as part of Multi-lateral Agreement, India has to charge nil rate of customs duty on all the IT products including telecommunication products. The ITA specifically recognizes optical fibre cables as a qualifying product for nil rate of duty. Accordingly, the Customs Administrations in many countries are charging 'nil' rate of customs duty on the import of such optical fibre cables.

However, the Hon'ble Advance Ruling Authority classified optical fibre cables under 9001 10 00 instead of 8544 70 90. The main distinction between optical fibre cables falling under 8544 and 9001 is that under 8544 the individual optical fibers are sheathed while the same are not individually sheathed under 9001. The Assessee Company, who sought the ruling could not provide the technical details to the Hon'ble Advance Ruling Authority to prove this point. In the absence of sufficient evidence, the Hon'ble Advance Ruling Authority classified this product under 9001.

In spite of the fact that the decision of the Advance Ruling Authority is specific only in relation to the Assessee Company, the Customs authorities all over India are applying this ruling and are stopping the clearances of the optical fibre cables unless they are classified under 9001 10 00 and the appropriate customs duty is paid.

- **Adverse Impact**

- This has resulted in unbudgeted and unexpected financial costs.
- The ruling has caused a great hindrance to the laying of the optical fibre cables throughout length and breadth of India, which is affecting the growth of telecom services in the country.
- This levy is against consumer interest as it will not only increase the cost of service but will also delay the roll-out.

- **RELIEF SOUGHT BY COAI:**

***We request you to fix `nil' rate of duty for optical fibre cables for telecommunication - whether they are classifiable under 8544 or 9001.***



#### 4. Excise Duty on BTS Cell sites

- **Present Scenario:**

BTS Cell Sites are put up for providing Telecommunication services at various locations all over the country. Despite Circular no: 58/1/2002-CX dated 15/1/2002 **and various judgments of the CESTAT and Hon'ble High Court holding that BTS Cell Sites are not excisable**, the field formations are going on issuing Show Cause Notices to Telecom Operators on the issue resulting wastage of valuable time, manpower and money of both the department and the telecom operators.

- **RELIEF SOUGHT BY COAI:**

**A clarificatory Circular be issued by the CBEC on the issue to put the dispute at rest.**

- **Benefits:**

Series of litigation ensuing the Adjudicating orders entailing unproductive utilization of resources would be avoided.



## 5. Duty free import licence under Served from India scheme

### Present scenario:

Currently, telecom operators avails the benefit available under “Served from India Scheme” (SFIS) of Foreign Trade Policy. In respect to SFIS, vide **Policy Circular No. 25(RE-2007) / 2004-09 dt 1-1-08**, a clarification has been issued stating as under:

“ 3. After due deliberations, with respect to services not originating from India, it has been decided that the following principles be applied while finalizing the claims.

- a). While examining the claim of Service Providers, the objective of promotion of export of services from India should be kept in mind.
- b). Services not originating from India would not be entitled for SFIS benefits.
- c). The definition of Services Provider, as given in Para 9.53 of FTP 2004 - 2009, clearly stipulates that supply of service “from India” is the first condition .....

The aforesaid Circular states that “Telecom Service providers earn foreign exchange for providing service that includes services not originating from India (e.g. Global Roaming charges). Such receipts of FX are not eligible for SFIS. Thus FX earned would be mean “receivables’ minus “payables” in a particular year, for telecom services.

It is submitted that:

- a) The clarification made by the Circular that the global roaming services provided by telecom operators are not supply of services originating from India is incorrect and is contrary to the factual position. The foreign subscriber while roaming in India uses the Indian operators’ network at all times and the Indian operator earns FX for the services rendered from India.
- b) All service providers earn valuable FX for the country by providing global roaming services from India and the said circular will have a crippling effect on these operators in particular and the telecom industry as a whole.
- c) The interpretation of the SFIS policy by the present Circular is clearly prejudicial to the global roaming services being provided to the operators in particular and the entire telecom industry as a whole.
- d) The FX billing done by the Indian operators on the foreign mobile operator is actually the gross FX earning for these operators and not receivable minus payables i.e. netting, as proposed under the Circular.



We therefore urge and submit that:-

- (i) **The Policy Circular number 25 (RE2007)/2004-2009 dated 1.1.2008 be withdrawn insofar as it relates to the telecom industry. The supply of services including global roaming services rendered to a foreign subscriber visiting India is originating from India only for which the operators are earning foreign exchange.**
- (ii) **The operators be permitted to avail SFIS benefit on the basis of actual billing to a foreign operator, as the same is a FX earning for the operator, rather than receivable minus payables i.e. netting, as proposed under the Circular which is contrary to the express provisions of the FTP.**
- (iii) **Further, a clarificatory circular be issued.**