



Mobile Phone Tax

Implementation Considerations

Introduction

The introduction of a tax on the mobile phone service would help raise additional revenues for the government. This tax would also help diversify the tax base for less reliance on oil revenue and is a step towards modernizing the tax legislation.

Most countries have incorporated the tax on the mobile phone service into the VAT or GST legislation as a telecommunications service. However, some states and cities in the United States introduced a separate law taxing the mobile phone service. The particularity in the latter case is that the mobile phone service is taxed once.

A Mobile Phone Tax (hereinafter referred to as MPT) should be a one-stage tax on general consumption of a particular service. It could be a stable and flexible source of revenue for the government. It would be collected on a current basis and should be relatively easy to administer because of the limited number of service providers. Mobile phone tax is a neutral tax; it has no distortion effect because consumers assume it. This tax will be levied as a percentage of the monthly gross charge on the mobile phone bill, or alternatively a fixed amount per month on each telephone number assigned to any user, however this method violates the equity principle and it is not recommended. In any case the final payer of the MPT is the consumer, therefore the avoidance by the taxpayer is less motivated.

The rate of the MPT shall be a specific percentage of all charges made for the mobile phone services applicable to a wireless customer's bills issued by the service provider and paid by the person receiving such services. The MPT shall be collected by the provider of such service and will be listed on the bill of the taxpayers. The provider will forward this tax to the Tax Authority. Implementing and administering a MPT should be attributed to the Tax Commission having jurisdiction over taxation matters

The implementation of a MPT requires a clarification of the application of this tax. The terms "*mobile phone service*" should be defined and a distinction should be made between

telecommunication services and those services, which are delivered by means of telecommunications. In addition, the structure of the MPT should be defined; such as the taxpayer, the place of supply rules, the tax base, the tax rate, collection, remittance, and control.

Definition

The definition of " Mobile phone service" shall be broad in scope, including a wide-range of services. It should include commercial mobile radio service, local and long distance telephone services, mail, video, audio, wireless personal communications services, wireless local loop services, enhanced special mobile radio services, fixed wireless services, text messages, and cellular services. The definition should also include the access to a telecommunications facility (such as a dedicated line). The term "telecommunication facility" should be defined to mean any facility, apparatus or other thing that is used or is capable of being used for telecommunications.

Therefore, wireless telecommunication service should be defined broadly to mean any transmission, emission, or reception of signs, signals, writing, images or sound or intelligence of any nature by radio, visual or other electromagnetic or laser-based system. Services including pager and beeper services, facsimile machine retailers, and long-distance or toll-telephone services, cellular network access charges, usage/airtime, roaming landline fees and messaging should be considered a taxable services for the purposes of the MPT.

Territoriality

The general principal is that the country where economic performance occurs or where the supplier's place of business is located, is the one having the right to impose the tax. However, through the use of modern technology, e.g., satellites, it is now possible for suppliers to provide mobile phone services without having any tangible place of business in, or even close to, the country of consumption. Determining the location of a supply is an important matter, especially for international services. In the absence of any international agreement setting jurisdiction, MPT shall provide for supply rules.

It could be stated that a service is deemed to be made in Iraq in the case of a mobile phone service if the instrument or facility for the emission, transmission or reception of the service in respect of which the invoice for the supply, is issued or ordinarily situated in Iraq.

Rules that will determine whether the phone service is supplied inside or outside Iraq could be based on the following rules. Mobile phone services are therefore deemed to be supplied in Iraq where:

- the facilities for making the mobile phone service are located in Iraq;
- the telecommunication is emitted and received in Iraq; or
- the billing location is in Iraq.

With developments such as the usage of phone cards, credit facilities, telephone usage may occur in countries other than the country where the customer belongs or where the customer is invoiced. We recommend then that prepaid calling arrangements be taxed at the point of sale rather than the point at which the service is actually used

Taxable person

By definition, tax legislation imposes the payment of the tax amount on taxpayers. The MPT would not be the exception. Thus, the new tax should determine who is subject to the tax on the mobile phone service. In this aspect, there are two possible taxpayers, the person who provides the service or the person receiving the taxable service.

Some legislation taxes the mobile phone service providers. The tax takes the form of a gross receipts tax or turnover tax. The tax is determined and assessed based on the gross receipts or on the turnover. In this case, the tax is not qualified as a sales tax and this option is not recommended.

The other way to tax the mobile phone service is by way of imposing a tax on the service's consumer, but collected by the provider. The phone service provider furnishing such mobile phone services shall then charge a percentage, determined by the MPT, on the gross amount billed to the consumer for the service, collect it, and remit it to the Tax Commission.

The term "*Person*" means any natural individual and juristic entities. The MPT Law should regard Partnerships and associations as taxable persons separate from individuals participating in them, regardless of the legal personality of the partnerships or association. Branches of a judicial person should also be treated as a separate taxable person for the purposes of the MPT.

Taxable supply

The taxable supply is the mobile phone services on which the MPT will be imposed. Tax would be levied on the gross charge when a mobile phone service is provided. The person who provides the services must impose and collect the tax and account for it to the Tax Commission regardless of the moment of payment (prepaid or postpaid service).

"*Gross charge*" means the amount paid for using the service in Iraq and for all services and equipment provided in connection therewith by the provider, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction whatsoever.

Charges for equipment should include such equipment that is leased or rented by the customer from any service provider, wherein such charges are disaggregated and separately identified from other charges.

In general, tax liability is determined at the time the service is provided. However, the prepaid phone cards usually contain an identification code that entitles the holder of the card to benefit from the services provided by the issuer. The cards may be sold through any number of retail outlets or given away as incentives for other purchases or for other reasons and some cards are sold as collectibles. Prepaid calling arrangements are also possible where the customer receives only the access number and authorization code; no card is provided to represent the transaction. In these cases, the tax should be collected at the moment of sale of the prepaid card or the access code. Imposing the MPT at the point of sale of a prepaid calling card eases the administration of the MPT for both the government and the mobile phone service providers.

Tax Rate

The rate should not exceed the rate imposed in surrounding countries. Companies charging the MPT to their clients should not be at a disadvantage when they must compete with providers in other countries.

In Jordan, VAT law provides the imposition of a sales tax on mobile phone services at a special rate of 4% and a general rate of 16 % of the value. The value means the actual price paid or payable by the purchaser to the supplier in return for the services supplied.

In Lebanon, VAT law imposes 10% on the telephone telecommunication services including the mobile phone service.

Pakistan has imposed a 15% general sales tax on the mobile phone service including phone cards.

In Turkey, the standard VAT rate is 18%. However, the telecommunication services given by GSM mobile phone operators are subject to 25% Special Communication Tax.

Clearly, the rate to be levied in Iraq will depend on the revenue the Government wishes to collect from the tax. At this stage we recommend turnover information be obtained from the few mobile phone service providers who currently operate in Iraq and some analysis be applied to establish a rate.

Tax due

The time of supply is important for deciding when a tax has to be collected with respect of the supply. When tax is due in respect of the taxable service, the amount of tax must be paid and a periodical tax return filed. This is a question of fact to be interpreted in the light of contacts and agreement under which the service is supplied.

The rules determining when the supply takes place are generally when the first of the following events occurs:

- The invoice is issued for the service,
- The service is paid for in whole or in part.

But to ensure that the issuance date or the payment are not unduly postponed with a corresponding postponement of liability for tax, we recommend that the tax liability will in any case arise no later than the 10th day after the earlier of the date when payment is made or the date when service is performed.

It is important to determine the time of supply of service by reference to when the service has been rendered. However, with regard to the mobile phone service as a long-term and continuing service, it may need different rules. The supply might be regarded as never ended, or it might be viewed as provided every minute, which would be impractical. However, payment is made from time to time, therefore each payment should be treated as a separate supply. As to the prepaid service, the tax should be considered due when the phone card is sold.

For this end and in order to reflect more accurately the realities and timing of this economic activity, the basic method of accounting for the MPT should be the accrual method. So the liability for tax will ordinarily arise under the accrual method on the date the invoice is issued.

Exemptions

Foreign diplomatic and consular representative offices and international organizations shall be exempted from the MPT according to Vienna Convention.

As for contractors exempted from tax under CPA Order 49, a certificate could be used for claiming the exemption. However, for the prepaid service (phone card), the contractor should pay the tax included in the price of the phone card and claim a tax refund from the Tax Commission.

Registration

To administer the Mobile Phone Tax, the Tax Administration should establish a formal register. For this end, it must be a requirement that any person who is, or should be, a taxable person must register for the MPT purposes. The register must be capable of generating a unique TIN for each taxable person. Tax Commission may adopt and adapt an existing register, such the register for businesses to act as the MPT register. Once the register number is issued, the law should require taxable person to use that number on all official communications with the Tax Commission. If the taxable person is already registered with the Tax Commission and has already been allocated a TIN then they must merely advise registration for the MPT and no new number will be issued.

A person who is required to register for the MPT is a taxable person who is subject to the duty to impose and collect the tax. It will be appropriate to impose penalties on those who should have registered but have failed to do so, as well as to ensure that full powers exist to collect the tax from all persons in respect of the mobile phone service.

Collection of tax

When a mobile phone service is provided, the person making the supply must collect the tax, account for it and remit it to the Tax Commission within the dates prescribed in the proposed Law. If the service provider does not collect the tax, the Tax Commission should still be entitled to collect the tax from the taxable person on the assumption that the tax has been imposed.

Every service provider subject to the MPT shall add to the price or charge for such services and collect from every customer thereof an amount equal to the prescribed percentage of gross price or gross charge therefore. It shall be unlawful for any service provider to fail or refuse to collect from the customer the amount required by the MPT law to be collected.

The MPT levied shall be collected from the customer and shall not relieve any service provider of the tax levied. The inability, impracticality, refusal, or failure to collect from such customer the amounts of tax shall not relieve such provider from the obligation of remittance. Whenever possible, the amount of MPT shall, when collected, be stated as a distinct item separate and apart from the gross charge.

The MPT shall constitute a debt owed by the provider to the government. Should the tax or any of the amounts (interest and penalties) due to the Tax Commission not be paid within the periods prescribed by Law, the Tax Commission shall serve the person a notice demanding payment of the tax and other amounts due within a period of 10 days after the notice was served. The notice served to the taxable person demanding him to pay the tax and all sums due according to the MPT law shall be deemed to be sufficient for the Tax Commission to take enforcement and seizure actions according to the *Government Debt collecting Law*.

Tax period

Timing and method of collecting taxes is very important for both the government and taxpayers.

For the government, timing and methods of collection obviously determine when revenues will be received. If the proper approach is taken, collections by the Tax Commission may be simplified.

For taxpayers, timing and methods of collection may simplify or complicate compliance with the tax laws.

Therefore, payment of the MPT should be periodic. The length of the tax period is a policy issue for the government. The standard period is the calendar month. The tax period should be distinguished from payment periods, for example in the case of advance payments of tax.

Tax return

It is essential in administering the MPT that information is provided at regular intervals by the service providers. A taxable person shall be required to submit a tax return, on a form approved by the Tax Commission, for every tax period even though no supplies have been made during that period. Tax return may be submitted in writing.

To comply with the obligation of information, there should be a standard form of return containing the necessary information, so that taxable person knows precisely what is required of them. Regulation could provide what information the tax return should contain.

Tax return shall be submitted monthly and should determine the value of services provided and the amount of tax due. The one-month-period shall be considered as a single accounting period. Tax Commission should have the authority to require by regulation more frequent returns, such a weekly, or less frequent returns. However, the less frequent returns apply on small taxable persons, which is not generally the case of mobile phone service providers.

Assessment by Tax Commission

The taxable person will file a return showing the MPT due for the month in question. This will constitute a self-assessment of the tax, and the tax will be due and payable with the filing of the return. However, the Tax Commission should be empowered to assess or reassess the tax, for instance when a timely return is not filed or the self-assessment is not accurate, and impose an obligation on the taxable person to pay the tax based on an estimated amount of tax. Where the Tax Commission makes such assessment, the tax, and interest and penalties as the case may be, will be due and payable by the date specified in the notice of assessment. The Tax Commission should have the right to examine the underlying books and records of a taxable person. Where taxpayers are dissatisfied with the assessment he would challenge it without risk of penalties, he may file an appeal giving the reasons. MPT should provide for appeal procedures.

Remittance

The MPT should specify that taxable persons must pay the tax to the Tax Commission at a specified time the amount of tax due the particular period. The duty to pay would be on a self-assessment basis. The taxable person determines the amount due by filling out the return. The taxable person should be responsible for paying the tax due to the Tax Commission in respect of any period within 30 days after the end of each calendar month. Payment of tax in advance could also be required, e.g. two times a month, based on tax liability for previous periods. The advance payments are then credited against the tax due with the return.

In case the Tax Commission charged additional or supplementary amounts, tax shall be paid according to the reassessment notice within 10 days from the date of notification of this assessment notice to the taxable person.

The MPT shall be paid in cash, certified check, or to any of the accepted private banks or its operative branches in Iraq, according to rules appointed by the Tax Commission.

Bad debts

The rules in any tax are designed to ensure timely payment of the tax related to a supply. However, it would happen that the tax has been paid to the Tax Commission, but payment for the mobile phone service is not received until a later time, or the payment will not be received at all. A solution to this problem is granting a specific allowance for bad debts. This allowance will amount to the equivalent the amount paid to the Tax Commission but not collected from the customer. The taxable person should be given the right to deduct from the tax due the value of the tax paid but not collected, or at least a tax refund.

If this approach is followed, the MPT law should provide a definition of “bad debt” to ensure an adequate implementation of this principle

Rules of collections:

In order to have an efficient tax administration, the Tax Commission must be able to collect unpaid taxes, interest, and penalties. In order to protect taxpayers’ rights, the collection authority of the Tax Commission must be clearly defined while at the same time the Tax Commission must have sufficient powers to accomplish its duties.

The Tax Commission shall send the taxable person, who fails to pay the tax and the amounts due within a legal deadline, a final personal warning that informs him to pay the tax within 15 days from the date of his notification.

Penalties for compliance

The MPT Law should provide chargeable penalties and interest starting the end of the tax payment deadline, in case of irregularity or delays in filing returns or in remittance of amount of tax or where the payment of the tax appears to be insufficient as a result of the audit or the direct assessment procedure. Thus all overdue amounts, including penalty charges, shall bear interest until paid at the rate determined by the Law.

As a last resort the MPT Law could provide for the revoke of the license to provide mobile phone service in Iraq as an ultimate penalty for repetitive violation of the law or the regulation.

Record inspection

Taxable person shall be required to keep regular books and records to make entries of business transactions. These books and records (including invoices shall be maintained for a length of time determined by law following the end of the fiscal period in which the entries have been made.

The method of keeping and organizing the necessary accounting documents to be adopted by the taxable person and enabling the application and control of the tax should be regulated by a decision of the Minister of Finance.

Conclusion and recommendations

The MPT would diversify the tax base for less reliance on oil revenue. The MPT would be easy to administer and would have no distortion effect. The MPT is a first step on the way of tax reform. For these reasons, we recommend the adoption of the legislation to set up the proposed tax.

We recommend that policy makers in the Ministry of Finance continue to evaluate the differences in tax treatment of different telecommunication services and monitor changes in these delivery methods with the goal of ensuring that the upcoming MPT law does not provide a competitive advantage to one delivery method over another.

We recommend that the Tax Commission continue a periodic review of taxation of mobile phone service to determine the extent to which the MPT is keeping pace with the legislative developments.

We recommend the integration of the MPT into any future VAT or Sales Tax laws to be introduced, which would apply to every aspect of the economy. As a pervasive tax, VAT once adopted, would cover a wide-range of goods and services including the mobile phone service.

Once approved, the MPT law shall be in full force and effect from and after its passage and approval and publication as required by law, provided, however, that the MPT shall take effect for all bills issued on or after the first day of entering into force.