

Service Tax Memorandum 2017: Sindh Finance Bill 2017 & Notifications, Punjab Finance Bill 2017 and Khyber Pakhtunkhwa Finance Bill 2017

SINDH SALES TAX ON SERVICES ACT, 2011

Franchise

Section 2(46)

The definition of franchise is proposed to be amended to provide legal backing to all such franchise arrangements / agreements which are executed against no consideration. This amendment is also in line with Rule 36 of the Sindh Sales Tax on Services Rules, 2012 (the Rules) which already provides a tax framework for agreements where consideration does not exist.

The amendment suggests that Rule 36 of the rules was not legally enforceable since it was in disharmony with the definition of franchise under Section 2(46) of Sindh Sales Tax on Services Act 2011 (SSTSA). In view of the aforesaid change, the status of all cases established against taxpayers on the basis of Rule 36 of the rules become questionable.

Recently, in the case of CAA vs. SRB, the Supreme Court of Pakistan (SCP) has held that value of service cannot be deemed for levying tax where service is rendered without consideration. The foregoing amendment may therefore undergo further legal tests based on the dictum of SCP.

Place of Business

Section 2(64)

The scope of place of business is proposed to be enhanced with a view to bring e-commerce business into the tax net. An amendment in the definition of place of business aims to cover all persons carrying out an economic activity in Sindh through virtual presence or a website or a web portal or through any other form of e-commerce by whatever name called or treated.

Identical amendment has also been proposed in the Punjab Sales Tax on Services Act, 2012 (PSTSA) through the Punjab Finance Bill, 2017 with the exception that Punjab Finance Bill 2017 has withdrawn an exclusion presently available in the definition in respect of liaison offices. The Sindh Finance Bill 2017 has not touched the said exclusion in SSTSA.

Programme

Section 2(67B)

The scope of programme is also proposed to be enhanced by including any audio or visual matter

re-recorded or subjected to any post-production processes like dubbing, colouring, sub-titling or captioning.

Persons Liable to Pay Tax

Section 9

Under the proposed changes, both service provider and service recipient would be jointly and severally liable to pay due tax, if service recipient does not make payment of tax to service provider within 180 days counted from the date of issuance of invoice and such service provider has not made the tax payment within stipulated time.

It is also provided under explanation that tax due also includes tax to be withheld or deducted by the service recipient.

We understand the amendment will undergo legal test whether the service recipient may be penalized for the wrongdoing of the service provider. Besides, in case of services attracting 100% withholding in the hands of recipient of services, how the service provider be penalized if such withholding is not deposited into the exchequer.

Nevertheless, this will require both the service provider and service recipient to develop a sound relationship themselves to avoid unnecessary exposure of tax payment that may arise on default of either party.

Input Tax Credit not allowed

Section 15A

A new clause is proposed to be inserted in Section 15A of SSTSA. Through this insertion, input tax credit has been debarred in respect of goods or services which are liable to sales tax, whether a federal sales tax or a provincial sales tax, at reduced rate or fixed rate. The proposed changes were already covered in Rule 22A of the rules. Now, this has been transformed to the main statute.

For the general body of service providers, input tax is allowed upto 13% on taxable goods and services. However, telecommunication sectors who charge sales tax @ 19.5% have been proposed to be given concession to claim input tax upto 17% on taxable goods and services. In other words, telecommunication sector will be entitled to claim input tax upto 17% on purchase of goods and services.

Adjustment of Input Tax Paid on certain Goods and Services

Section 15B

It is proposed that input tax on purchase of the capital goods, machinery and fixed assets as are classified under section XVI, Chapters 84 and 85 of the First Schedule to the Customs Act, 1969

would be allowed in twelve equal monthly installments.

The proposed changes will certainly stuck the cash flow of the service providers. Such amendment is similar to restriction placed in Sales Tax Act, 1990, few years back. The same was omitted in view of the hurdles in conducting business in a smooth way and practical issues experienced by the taxpayers.

Assessment of Tax

Section 23

The bill proposes to enhance the time limit of issuance of assessment order from 120 days to 180 days.

Offences and Penalties

Section 43

A penalty of Rs 100,000 or an amount equal to the amount of tax involved, whichever is higher is proposed to be imposed on any person who refuses or denies or obstructs the compliance of the provisions of newly inserted Section 54A described below in our commentary.

Such person shall further be liable, upon conviction by a Special Judge, to imprisonment which may extend to one year, or with fine which may extend to Rs 100,000 or with both.

Short Paid Amounts Recoverable Without Notice

Section 47A

The bill proposes to recover amount of tax without issuance of show cause notice in case where a registered person pays the amount of tax less than the tax due as indicated in its return. The short-paid amount of tax along with default surcharge shall be recovered from such person by attaching his bank accounts and without prejudice to any other action prescribed under Section 66 for recovery of tax. However, no penalty under section 43 of the Act can be imposed unless a show cause notice is issued to such person.

The aforesaid change is already available in Section 11A of the Sales Tax Act, 1990 against which the High Court has already rendered such recovery action as null and void.

Monitoring or Tracking by Electronic or Other Means

Section 54A

A new Section 54A is proposed to be inserted whereby Board is empowered to specify by notification in official gazette registered person or class of registered persons or any of the services or class of services in respect of which monitoring or tracking of provision of service or

services may be implemented through electronic or other means. The Board may impose any condition or restriction or devise any procedure, as it deems fit, in this regard.

The Board would also be able to devise and implement an electronic system for monitoring and capturing the transactions recorded or the invoices issued by a registered person or a class of registered persons or a service or services or class of services, and transferring the information, obtained by such monitoring or capturing of transactions or invoices, to the computer systems of the Board on real time basis or otherwise.

The Board would also specify the date wherefrom the persons providing or rendering taxable services shall compulsorily use such electronic means or systems, including fiscal cash registers for issuance of tax invoice.

Appeals

Section 57

As a positive step, right of appeal has been granted to the persons who feel aggrieved by an order or decision regarding de-registration under Section 25A of SSTSA. Presently, this remedy is not available under the SSTSA.

Automatic Stay against Demand

Section 66

It is proposed that the officer of SRB shall not issue the recovery notice to the taxpayer for recovery of assessed tax till the decision of Commissioner (Appeals), if the taxpayer pays 25% of tax due framed in the assessment order. This provision proposes harmonization of recovery provisions between federal and other provincial statutes.

Licenses/Permissions only to registered service providers

Section 72A

A new Section 72A in the Act is proposed to be inserted whereby the Board is empowered, after obtaining the approval of Government and by notification in the official Gazette, to require any authority, including a regulatory authority, which is competent to issue or renew licenses or permissions for engaging into an economic activity which is a taxable service, not to issue or renew such licenses or permissions unless the licensee or the permission-holder submits the evidence that he is duly registered under section 24 or 24A or 24B of SSTSA.

Service of Orders and Decisions

Section 75

The proposition is given through Finance Bill that the notices and show cause notices can be

issued electronically which would be considered to have been legally serviced to the registered person. This amendment is also made in line with the federal and provincial statutes.

Condonation of Time-Limit

Section 81

An explanation has been provided through bill which clarifies that condonation for time limit in respect of any act or thing to be done under SSTSA is only available to persons registered under the SSTSA or authorities specified under Section 34 of SSTSA.

SRB NOTIFICATIONS

Extension of Exemption Period for Life Insurance Services

Notification SRB 3-4/10/2017 dated 5 June 2017

Exemption on Services of life insurance bearing Tariff Heading 9813.1500 (other than its related re-insurance services has been extended to 30 June 2018.

Amendment in Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

Notification SRB 3-4/13/2017 dated 5 June 2017

By virtue of amendment, the withholding agent has been made liable to withhold and deposit Sindh Sales Tax on services provided by SRB registered person who did not charge Sindh sales tax on his invoice. For the purpose of such withholding, the amount of Sindh sales tax will be worked out on the basis of gross value of taxable services under the tax fraction formula as provided under Section 2(93A) of the SSTSA.

The aforesaid Notification further stipulates that the registered person will not be absolved of its liabilities (including penalty and default surcharge as provided under SSTSA.

AMENDMENTS IN SINDH SALES TAX ON SERVICES ACT, 2011

Notification SRB 3-4/12/2017 dated 5 June 2017 - Effective from 1 July 2017

Through aforesaid notification, the following changes have been introduced:



Rules Changes

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22(1) Period for claiming input tax paid on goods
and services has been increased to 6 from 4 tax
periods.

42E(3) Amount of reimbursement of salaries and allowances
of the labour and manpower are included in the value
of services. Hence, such reimbursements have been now
exposed to Sindh Sales Tax @ 13% under Tariff Heading
9829.0000 of the Second Schedule of the SSTSA.
Earlier, such reimbursements were not exposed to
Sindh Sales Tax.
With this change, the tax treatment of labour and
manpower services have been identical under both
Sindh & Punjab Sales Tax Laws.

SST-03 The column for 'Reasons for non-creditable input
(quote section or rule)' has been added in the
return.

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CHANGES IN REDUCED RATE REGIME

Notification SRB 3-4/11 /2017 dated 5 June 2017 - Effective from 1 July 2017 Withdrawal of Reduced Rate on Telecommunication Services

The reduced rate of 19% on telecommunication services has been withdrawn. Now onward, statutory rate of 19.5% will be applicable on telecommunication services. At present, telecommunication services are taxed at 19.5% and 19% in case where the service provider passes on the full benefit of the reduced rate of tax to the service recipient and shall neither invoice/bill nor collect any extra charge/amount or surcharge on the value of the services.

Reduction in Sindh Sales Tax Rates

Rate of taxes against the following taxable services has been reduced

S. No Tariff	Description of Services	
	Existing	Proposed
Heading	Rate	Rate
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1	Travel Agents		
9805.5000	10%	8%	

2	Tour Operators		
9805.5100	10%	8%	

3	Renting of Immoveable Property Services		
9806.1000	8%	3%	

4	Services provided or rendered by an indenter		
9819.1200	13%	3%	

from a place of business in Sindh for which the registered person receives the value of the services from a place outside Pakistan in foreign exchange through banking channels in the business bank account of the registered person in manner prescribed by the State Bank of Pakistan.

5	Services provided or rendered by a call centre		
9835.0000	13%	3%	

from a place of business in Sindh for which the registered person receives the value of the services from a place outside Pakistan in foreign exchange through baking channels in the

business bank account of the registered person in the manner prescribed by State Bank of Pakistan.

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PUNJAB SALES TAX ON SERVICES ACT 2012

Due Date

Section 2(17)

The Bill proposes an identical model of e-filing of Punjab sales tax return which was introduced as STRIVE by FBR. The related notification may be issued to announce such dates for submission of different annexures of tax return. This would mean that taxpayers would be able to electronically select the purchases in their Punjab sales tax returns with no manual feeding from 01 July 2017.

We reckon PRA Web Portal will need to allow manual claim of input tax in respect of supplies / goods and services acquired from suppliers / vendors operating in other territorial jurisdictions / Provinces where such an electronic system is not in vogue.

Place of Business

Section 2(30)

The Bill extended the definition of 'place of business' by amending Section 2(30(b) of the Punjab Sales Tax on Services Act, 2012 (PSTSA). By virtue of aforesaid amendment, the place of business will, inter alia, include virtual presence or a website or a web portal or through any other form of e-commerce by whatever name called can be treated as place of business for levy of Punjab sales tax.

The aim of extending the scope of the aforesaid definition is to broaden the tax net within territorial jurisdiction of Punjab which may increase the revenue not only from the persons having registered office or place of business and carrying economic activity but from the persons who are engaged in rendering services through their virtual presence.

Liability of a Registered Person

Section 11(a)

In order to harmonize the law, Section 11(a) has been inserted which extended the scope of joint and several liability. The Bill proposes that any registered person or withholding agent who failed to make the payment within 180 days counted from the date of invoice; and service provider who has not made payment within due date, shall be dealt jointly and severally and be liable for payment of such tax, including withholding tax.

Presently, the responsibility of making payment is to the extent of service recipient where the services are subject to withholding of tax. Accordingly, service providers do not bother for the payment especially in case of advertisement services.

Special Procedure for Collection of Tax

Section 14A

The Bill seeks to insert a new section 14A which empowers the Authority to issue a notification to declare any person or class of person, not necessarily being a service provider or service recipient, as tax collecting agent. The said person shall be liable to pay full or part of Punjab sales tax so collected to the Government as per procedures to be prescribed by the Authority.

PRA may issue notification to specify the person for collection of Punjab sales tax.

Deduction and Adjustment of Tax on Inputs to the Business

Section 16(2), 16(4)(B) and 16(5)

In line with the planned introduction of STRIVE under PSTSA laws, it has been proposed that registered person will be entitled to claim adjustment, deduction or refund of the tax paid or payable under any other law only when they furnish tax invoice or Goods Declaration (GD), bearing the name of claimant and its National Tax Number, in case of domestic purchases or imports respectively. It is understandable that the proposed STRIV system will only cater to the sales tax invoices issued under PSTSA.

The Bill also seeks to substitute sub-section (4) of section 16, empowering the Authority to put restrictions on claim / adjustment of input tax by issuing notification with the approval of the Government.

The Bill further proposed to re-number sub-section (4) as (5) and also add the restriction on adjustment of further tax and extra tax. Such credits are already debarred under Sales Tax Act 1990.

Adjustment of Input Tax Paid on Certain Goods and Services

Section 16(C)

New Section 16C is proposed to be inserted whereby input tax on fixed asset will be claimable in 12 equal installments. Such amendment is similar to restriction was imposed in Sales Tax Act, 1990, few years back.

We understand the proposed amendment will unnecessarily put the taxpayer at a disadvantageous position as against a full credit on fixed assets, they will be able to claim only a portion of the tax and pay a higher sum to PRA on a monthly basis.

Assessment of Tax

Section 24

The Bill proposes to enhance time period of issuance of show cause notice for amendment for conducting assessment of tax matters from five years to eight years. Similar amendment was made by Sindh Government last year.

In light of various courts judgments, we understand new period will be applicable from July 2017 onward.

Appointment of Authorities

Section 39

The Bill proposes to include new designations of officer in Section 39 such as 'Risk compliance officer', 'Enforcement Officer', 'Audit Officer', or 'Inspector' etc.

OFFENCES AND PENALTIES

Section 48

Bill proposes to reduce minimum penalty to Rs 100 from Rs 25,000 against any person who obstructs any officer of PRA in the performance of his duty. The maximum limit of penalty ie one hundred percent of tax amount is still intact.

Recovery of Arrears of Tax

Section 70

As a core recovery oriented amendment, Section 70 of PSTSA has been amended whereby PRA would be authorized to recover the amount of impugned tax payable by a taxpayer from any other person who owe any amount to such taxpayer under legally enforceable relation including purchase contracts, contracts with credit or financial institutions or banking companies, lease contracts, loan agreements, building loan contracts, life insurance contracts, employment or work contracts etc.

In line with the amendments proposed in Sales Tax Act 1990, the Bill also seeks to provide automatic stay against recovery of the disputed tax demand on payment of at least 25% of such demand during pendency of the appeal before the Commissioner (Appeals).

Power to restrain certain authorities

Section 76A

A new Section 76A is proposed to be added whereby PRA may issue notification to restrain any other authority to renew or issue license if registration evidence under PSTSA is not furnished by the relevant taxpayer.

Service of Orders and Decisions

Section 78

The Bill proposes to include notice and show cause notice in Section 78 for prescribing service of such notices. Presently, only orders are covered.

Condonation of Time Limit

Section 84

Bill proposes to add explanation in Section 84 to clarify that both registered person and officer can

apply for condonation of time.

Telecommunication Services

Second Schedule - Serial No 6

Bill proposes to withdraw blanket exemption on Internet Services and limiting such exemption for student who uses such services up to Rs 1,500. In 2015, Punjab Government attempted to restrict such blanket exemption and then restored after protest.

Construction Services

Second Schedule - Serial No 14

The existing facility of zero rating or reduced rate to government civil projects is proposed to be transformed from Notification No SO(TAX)5-24/2016 dated 5 October 2016 to Second Schedule of PSTSA. A brief summary of the proposed amendment is given below:

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Type of Construction Service	
Tariff	Rate

Heading -

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All services specified at S.No.14 without input tax credit or 1%

adjustment to the extent of Government civil works including those of cantonment boards involved in the ongoing development schemes and projects launched during Financial Year 2016-17

and funded under the Annual Development Plan of the Punjab

Government or funded through foreign loans where the negotiations

were finalized after 1st of July 2016 or funded under

Public Sector Development Program of the Federal

Government or funded by the Cantonment Boards.
9824.0000

and

All services specified at S.No.14 without input tax credit/
respective 0%

adjustment to the extent of Government civil works including headings -

those of cantonment boards involved in the ongoing development schemes and projects launched prior to Financial Year 2016-17

and funded under the Annual Development Plan of the Punjab

Government or funded through foreign loans where the

negotiations were finalized as on 1st of July 2016 or funded

under Public Sector Development Program of the Federal Government or funded by Cantonment Boards.

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Services rendered by Contractor of Building

Second Schedule - Serial No. 16

Tax rate on services rendered by contractor of building has been reduced from 16% to 5% with the condition that input tax adjustment will not be admissible.

Persons engaged in Contractual Execution of Work or Furnishing Supplies

Second Schedule - Serial No. 16

The current exemption of Rs 50 Million available for service provider who is engaged in contractual execution of work has been withdrawn. By virtue of such an amendment, the services of persons engaged in the contractual execution of work or furnishing supplies shall be taxable irrespective of the value of the work, except for the contracts involving printing or supplies of books which will remain exempt irrespective of the value of contracts.

KHYBER PAKHTUNKHWA FINANCE ACT, 2013 The Bill has proposed to include 'Ride hailing services' bearing Tariff Heading 9803.3000 in the First Schedule of Khyber Pakhtunkhwa Finance Act, 2013.

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