

***KARACHI TAX BAR ASSOCIATION  
SEMINAR ON SALES TAX***

***IMPORTANT CHANGES IN SALES TAX ACT, 1990  
BY***

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***AUGUST 17, 2016***

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## **1. CHANGES MADE IN THE SECTIONS OF THE SALES TAX ACT, 1990**

### **PROVINCIAL INPUT TAX**

*[Section 2(14)]*

- Through the Finance Act, 2016, the definition of 'input tax' given in section 2 (14) of the Sales Tax Act, 1990 has been amended to exclude the Sales tax paid under respective Provincial sales tax laws. As a result, provincial input tax (including Islamabad Capital Territory Sales Tax) is no longer adjustable against Federal Sales Tax liability.
- Our Members would remember that in the conference arranged by the Bar in January 2014, representatives of all the Provincial Authorities and Federal Board of Revenue (FBR) agreed to resolve the matter of input adjustment. As a result of that, MoU, was signed between Federal and Provincial Governments, and SRO 212(I)/2014 dated March 26, 2014 was issued.

- Now in view of amendment made through Finance Act, 2016, SRO 212(I)/2014 dated March 26, 2014 has also been withdrawn ( unfortunately).
- This is a harsh measure on behalf of federal government, in view of inability of Provincial and federal Revenue authorities to resolve their differences. As a result, taxpayers are now suffering as they have been deprived off their legitimate right to claim input tax against the Federal Sales Tax liability.
- In view of above measure, cost of doing business will increase, resulting in loss of revenue for both provinces as well as Federal Government. This will also result in litigation as the taxpayers have now already approached the courts, which have granted interim stay.

### **Recommendation**

- We welcome the initiative of FBR to resolve this matter and suggest that the agreement with Provincial Authorities should be reached at the earliest.
- The example set by India also needs to be looked into, where GST under VAT mode has been implemented across India. The concept of GST council and single collection / registration agency adopted in India is also a solution for our problems.

## ***RETURN OF SALES TAX***

*[Section 2(9) and Section 26]*

Finance Act, 2016, has introduced concept of specifying different dates for furnishing different parts or annexures of the return. Following new procedure has been prescribed:

- The supplier is required to file Annexure C and I relating to supplies and debit credit notes respectively by 10<sup>th</sup> of every month
- The buyer would be informed of the respective input tax and debit/credit notes.
- In case supplier has not filed his monthly sales tax return of the related period, the buyer would be allowed provisional adjustment of input tax against invoices. However, if the supplier fails to file his return by the 10th of the next month, the input tax would be adjusted or recovered and in case the supplier files his monthly return subsequently, the buyer would be informed that the objection on related invoices stands settled, and input tax will be allowed in next return.

- Similarly, provisions are introduced for withholding sales tax and for debit/credit notes.

Moreover, the requirement for separate return under section 26 of the Sales Tax Act, 1990, in case of change in rate of sales tax during a tax period has been withdrawn.

In a separate presentation, practical issues relating to new return filing system are being addressed.

## ***RECOVERY OF WITHHOLDING SALES TAX***

*[Section 11 (4A)]*

- There was a controversy whether default of sales tax withholding was subject to assessment under section 11. Some decisions of appellate authorities have held that section 11 does not envisage such possibility. Recently, LHC has however held that default of sales tax withholding can be subject to assessment under section 11.
- Finance Act, 2016 has removed this anomaly and the amendment introduced in section 11 now provides that default on account of sales tax withholding can also be assessed under section 11.

### **Suggestion**

FBR should issue a policy guideline that proceedings relating to withholding default may only be initiated where the supplier has not paid the sales tax. Similar provisions exist in income tax law.

## ***2. CHANGES MADE THROUGH SROs***

### ***CHANGES MADE IN S.R.O. 1125***

*[SRO 491(I)/2016 dated June 30, 2016]*

- In order to address the problem of accumulation of refunds on account of sales tax levy at input stage, the Government has reverted back to the old scheme of zero rating the local supply.
- Under the new scheme, import and supply of 'industrial inputs' have been zero rated which was previously subject to sales tax at 3 percent.
- Now, sales tax at 5 percent will be applicable on supply of finished goods post manufacturing, whereas goods imported in finished form will remain subject to sales tax at normal rate of 17 percent.



- The scheme although built on the concept of 'No tax, No Refund' doctrine is expected to partially resolve the issue of refunds as the same may continue to accumulate on items of multi-industrial use. Incidence of Provincial Sales Tax is a separate subject to be dealt with.
- The items covered under the S.R.O 1125 which are subject to reduced rate are subject to further tax at the rate of 2% if the same are sold to un-registered persons.
- However, the items which are subject to sales tax at the rate of zero percent under S.R.O 1125, should not be subjected to further tax as zero rating is covered under section 4 of the Sales Tax Act, 1990. FBR has however issued a clarification dated August 5, 2016, as per which FBR is of the view that zero rated supplies are also subject to further tax.

### **Issues / Recommendations**

- (i) FBR should re-visit its clarification relating to further tax on goods zero-rated supplies under SRO 1125.
- (ii) Issuance of General Order for zero-rating of supply of fuel to person eligible under SRO 1125.
- (iii) Input / refund of packing material relating to export.
- (iv) Issuance of refund cheques where RPOs have been issued.

***SALES TAX SPECIAL PROCEDURE RULES OF RETAILERS***  
*[SRO 488(I)/2016 dated June 30, 2016]*

STSPR envisage two categories of Retailers. The first category (hereinafter referred to as 'Tier 1') of retailers is that of those who fall in any of the following:

- Retailers operating as a unit of national or international chains of stores;
- Retailers operating in air-conditioned shopping mall, plaza or center excluding kiosks;
- Retailers whose cumulative electricity bill in excess of Rs. 600,000 in immediately preceding twelve months; and
- Wholesaler-cum-retailer, engaged in bulk import or supply of consumer goods.
- Tier 1 retailers (except for those dealing in goods specified in SRO 1125) are at present liable to register and charge sales tax under normal law.

Through SRO 488, Tier 1 retailers (including retail of SRO 1125) have now been allowed an option in the following manner:

- They will pay sales tax at the rate of two percent of their entire turnover including exempt supply without adjustment of input tax
- Such retailers were required to furnish option to Chief Commissioner of respective Large Taxpayers Unit or Regional Tax Office by July 15, 2016.

Tier 2 Retailers (i.e. those retailers who do not fall in Tier 1) will continue to pay sales tax through electricity bills at the following rates under section 3(9) of the Sales Tax Act, 1990:

- At the rate of 5% where the monthly electricity bill does not exceed Rs. 20,000
- At the rate of 7.5% where the monthly electricity bill exceeds Rs. 20,000

Retailers paying sales tax through electricity bills will not be required to file sales tax return and will not be subjected to audit and scrutiny under the Sales Tax Special Procedure Rules, 2007.

### ***3. SALES TAX WITHHOLDING FROM GOODS***

In view of new sales tax return filing system, FBR is requested to withdraw the sales tax withholding from registered persons, and restrict sales tax withholding from un-registered person at the time of payment (instead of present system of withholding on accrual basis).

**THANK YOU**