

Sales Tax Audit & Assessment; Case Studies

Karachi Tax Bar Association

Advance PDP 2020

22 January 2020

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Sale Tax Audit Under

The Sales Tax Act 1990 (the ST Act)

And

**The Sindh Sales Tax on Services Act 2011
(the SST Act)**

Sale Tax Audit

Selection and Conduct of Audit

ST Act - Section 25 and 72B	SST Act - Section 28
<ul style="list-style-type: none"> Section 72B authorizes the Federal Board of Revenue (FBR) for selection of persons or classes of persons for sales tax audit through random or parametric balloting. Section 25 empowers the Commissioner Inland Revenue (CIR) to call records by a person required maintain records under the ST Act for audit. Audit shall be conducted u/s 25 in both scenarios by an officer not below the rank of Assistant Commissioner. 	<ul style="list-style-type: none"> Based on return filed by a registered person or record available to SRB, an office not below rank of Auditor SRB may select and conduct audit of a registered person.
<ul style="list-style-type: none"> Special audit panel u/s 32A 	<ul style="list-style-type: none"> Special audit panel u/s 29
<ul style="list-style-type: none"> These provisions do not require to provide basis for audit selection. However, the Courts in various judgment held that reasonable justification should be provided for audit selection. 	

Sale Tax Audit

Selection and Conduct of Audit – cont...

ST Act - Section 25 and 72B	SST Act - Section 28
<p>Procedure for conduct of audit laid down in Para 39 of STGO No. 3 of 2004, dated 12 June 2004</p>	<p>Procedure defined</p> <ul style="list-style-type: none"> - Taxpayer may file response against audit observation within 21 day - Audit report shall be sent to assessing officer
<p>Audit may be conducted once a year</p>	<p>Audit may be conducted once a year</p>
<p>Where CIR has information or sufficient evidence of conduct of tax fraud or evasion of tax, he may conduct investigation u/s 38 and allow an authorized office to access business premises, stocks, records, etc</p>	<p>Where Commissioner SRB has information of conduct of tax fraud or evasion of tax, he may conduct investigation u/s 51 and allow an authorized office to access business premises, stocks, records, etc</p>
<p>After audit assessment proceeding may conduct u/s 11</p>	<p>After audit assessment proceeding may conduct u/s 23</p>

Sale Tax Audit

Selection and Conduct of Audit – cont...

Practical Aspects

- LHC held that parameter for audit selection should be reasonable and separate for income tax, sales tax and federal excise laws.
- Certain taxpayers challenged CIR's power to select case for audit u/s 25 in presence of Section 72B. LHC and SHC held that the CIR has independent power to select for audit, under Section 25, in presence of FBR's power u/s 72B.
- An explanation in Section 25 is also inserted which provides that power of CIR and FBR for investigation and access to record u/s 25 is independent of Section 72B.
- Since ST Act does not provide concept of tax year therefore, audit policy usually states that sales tax period will be corresponding to accounting period adopted for income tax for relevant tax year.
- Auditor can only asked for records required to be maintain under section 22 of the ST Act and 27 of the SST Act.

Assessment Under The ST Act and The SST Act

Assessment Proceedings

Section 11 of ST Act	Section 23 of SST Act
<ul style="list-style-type: none">▪ Sub-Section (1) where a person fails to file returns.▪ Sub-Section (2) where person not pays tax due or claims inadmissible input or refund▪ Sub-Section (3) where person is involved in tax fraud▪ Sub-Section (4) where person either inadvertently or misconception fails to pay tax▪ Sub-Section (4A) for recovery short withholding of sales tax.	<p>Sub-Section (1) where AC-SRB is of the opinion that <u>a registered person</u> not paid tax due or made short payment of tax</p> <p>Sub-Section (2) where a <u>a person</u> fails to file return or furnish information then AC-SRB may make best judgment assessment</p>

Assessment Proceedings – cont...

ST Act – Section 11(2)	SST Act - Section 23
No order shall be passed unless a show cause notice is given	No order shall be passed unless a show cause notice is given
Assessment order should be passed within <u>120 days</u> from date of showcause, however, CIR may extend further <u>90 days</u> (excluding extension period upto 60 days requested by taxpayer)	Assessment order should be passed within <u>180 days</u> from date of showcause however, Assistant Commissioner may extend further <u>60 days</u> (excluding extension requested by taxpayer)
Time barred - a showcause notice should be issued within 5 years from <u>the relevant date</u>	Time barred for - a showcause notice should be issued within 8 years <u>from the end of the tax period</u> (<u>changed from 5 years to 8 years vide the Sindh Finance Act 2016</u>)
Any change in time limitation would be applicable for subsequent tax periods in view of <u>judgment of Supreme Court of Pakistan in case of Eli Lilly (2009 PTD 1392) and Eden Builders Limited (2018 PTD 1474) and</u>	

Assessment Proceedings – cont...

Practical Aspects

- Powers of assessment u/s 11 delegates by the FBR to Commissioners u/s 30 can not be further delegated to sub-ordinate officer by CIR. Matter decided by IHC in reported judgment 2016 PTD 2332 and LHC in reported judgment of 2018 PTCL 182 and 2018 PTCL 199.
- Officer is required to mention relevant section for assessment proceedings otherwise courts including AT-SRB (in case of Burj Bank) has annulled whole proceedings.
- LHC held that show-cause should not be used to commence roving and fishing inquiries
- Charges must be imposed by the clear and unambiguous language and vague and ambiguous notice are not warranted. Refer judgment 1987 SCMR 1840, 1996 SCMR 1470, 2005 PTD 152 and PTCL 2013 CL.243.

Assessment Proceedings – cont...

Practical Points

- In case of allegation for tax fraud burden is on the department to establish the allegations with conclusive evidence. Refer judgment 2019 PTD 776.
- If taxpayer fails to file a return, the tax officer is empowered to determine the tax liability of the registered person. Procedure for determination of minimum tax liability described under Sales Tax General Order No.3 of 2004, dated 12 June 2004.

Assessment of Non or Short Withholding Sales Tax

Recovery of Short Withholding Sales Tax

ST Act Sec. 11(4A)	SST Act Sec. 47(1B)
<p>Through the Finance Act 2016 a new sub section 11(4A) has been inserted for authorizing the tax officers assessed and recover short withholding of sales tax.</p>	<p>Through the Finance Act 2016 a new sub section 47(1B) has been inserted for authorizing the SRB officers to recover short withholding of Sindh sales tax.</p> <p>The Sindh Finance Act 2019 inserted sub-section (3) to the Section 13 whereby withholding agent is held responsible for payment of short withholding.</p>

Recovery of Short Withholding Sales Tax – cont...

Practical Aspects

- Tax Officers are not empowered to recover short withholding of taxes prior to the insertion of Section 11(4A) of ST Act. This principal laid down by ATIR – Lahore Bench (reported as 2018 PTD 850). Similar stance may be taken in recovery proceedings of short withholding of SST.
- In case of short withholding on purchases from registered person, if sales tax is fully paid by supplier then recovery of short withholding would tantamount to double taxation. Refer unreported judgment of ATIR – Lahore Bench in the case of Messrs Mumtaz Engineers (Pvt.) Ltd, Lahore.
- In case of recovery of short withholding under SST Act, it may be argued that officer is not empowered to assess short withholding and without assessment proceedings recovery of short withholding is against natural justice.
- It is usually observed that officer initiates proceeding for short withholding u/s 11(2) of ST Act. ATIR in case of Mughal Engineering Works (Pvt.) Ltd, Lahore held Section 11(2) could not be invoked for recovery of short withholding.

Questions ?

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