



ADVANCE PROFESSIONAL DEVELOPMENT PROGRAM

by

Karachi Tax Bar Association

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PRESENTATION ON

**SALES TAX AUDITS, ASSESSMENTS
AND CASE EXPERIENCE**

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Topics to be covered:

- Sales Tax Audits
- Investigation
- Assessment of Sales tax
- Audit observation, Show Cause Notice and Order-in-Original
- Guidelines for Taxpayers for Audit / Compliances:

Sales Tax Audits:

Particulars	Section
Routine / Desk Audit of records	Section 25
Audit by Special Audit Panels	Section 32A
Investigation / Inquiry	Section 38 and 38B
Selection of Cases by the Board	Section 72B
Pre or Post Refund Audit	Chapter-III of the Sales Tax Rules, 2006
Investigation by the Directorate General of Intelligence and Investigation-IR	SRO. 1308(I)/2018 - 29-10-2018 issued in suppression of SRO. 116(I)/2015 - 09-02-2015

Tax Audit – Section 25:

- Commissioner Inland Revenue (CIR) himself can requisition statutory records or access the records / computers as per sub-section (1) of Section 25 of Sales Tax Act, 1990.
- Although the law does not provide for justification for calling the records, yet the Superior Courts has mandated providing justification.
- On the basis of records, the CIR or authorized Tax Officer may conduct audit once in a year per sub-section (2) of Section 25 of Sales Tax Act, 1990.
- Audit proceedings can also be done electronically sub-section (2A) of Section 25 of Sales Tax Act, 1990.

Tax Audit – Section 25:

- There is no bar to re-audit the records, if it is audited earlier by Auditor General of Pakistan.
- Procedure to conduct audit is laid down under Para 39 of STGO No. 3 of 2004, dated June 12, 2004.
- Where CIR has information or sufficient evidence of tax fraud or evasion of tax, he may conduct investigation U/s. 38 and allow an authorized officer to access business premises, stocks, records, etc.
- After the completion of audit, order-in-original can be passed under Section 11 of Sales Tax Act, 1990.

Special Audit – Section 32A:

The purpose/scope of Special Audit is:

- To determine whether the records, invoices and monthly returns are maintained and issued correctly.
- To determine whether monthly sales tax returns accurately reflect all taxable services rendered during tax periods.
- To determine whether input tax, output tax, tax adjustments, tax payable or tax refundable are substantiated with the records.

Investigation / Inquiry – Section 38 and 38B:

- Officer authorized by the Board or Commissioner has the authority to have free access to the business premises of a registered person.
- The investigation/enquiry may be conducted in case (if any) tax fraud is committed by the registered person or his agent.
- Section 25 of Sales Tax Act, 1990, itself provides authority who may initiate investigation under Section 38 of Sales Tax Act, 1990, in cases of tax frauds.

Investigation / Inquiry – Section 38 and 38B:

- For the investigation / inquiry under this section the Commissioner may authorize an Officer not below the rank of Assistant Commissioner.
- The onus lies on FBR / CIR to prove the tax fraud in accordance with the definition of term “tax fraud”.
- Section 38 does not provide authority to adjudicate cases, as such the assessment and recovery can be enforced through Section 11 of the Sales Tax Act, 1990, by the concerned LTO/MTO/CRTO/RTOs.

Selection of cases for Audit – Section 72B:

- Section 72B of Sales Tax Act, 1990 authorizes Federal Board of Revenue (FBR) to select cases for audit through random or parametric balloting.
- Several interpretations of Section 72B have been given by Hon'ble Lahore High Court and Islamabad High Court. In this regard, Hon'ble Islamabad High Court has held that Commissioner can exercise his authority independently to initiate audit without selection by the Board (FBR).
- Whereas, Hon'ble Lahore High Court has held that the audit notices for the year 2011 were set aside and specific directions were given to the Board after framing parameters for selection of audit.

Assessment of Tax and Recovery – Section 11:

- There are Five situations that are separately dealt under Section 11 of Sales Tax Act, 1990 vis-à-vis:
 - Sub-section (1) deals with a situation where a person fails to file sales tax return for a tax period by the due date or there has been short-payment of tax due to any miscalculation.
 - Sub-section (2) deals with a situation where a person fails to pay tax or there is short payment of tax or claim of inadmissible input tax credit or refund for reasons other than miscalculation.
 - Sub-section (3) deals with a situation where due to some collision or deliberate act any tax has not been levied or has been short levied or has been erroneously refunded.

Assessment of Tax and Recovery – Section 11:

- Sub-section (4) deals with a situation where due to any inadvertence, error or misconstruction any tax has not been levied or has been short levied or has been erroneously refunded.
- Sub-Section (4A) deals with recovery short withholding of sales tax.
- Time Limitation to issue Show Cause Notice U/s. 11 of the Sales Tax Act, 1990, is five (05) Years of end of financial year in which relevant date falls.

Assessment of Tax and Recovery – Section 11:

- Taxpayer must be awarded an opportunity of being heard.
- The time period within which the Order-in-Original must be issued is 120 days, which may be extended by Commissioner Inland Revenue up to 90 days, excluding the time lapsed due to stay proceedings or alternate dispute resolution or adjournment applied by the taxpayer not beyond 60 days.
- 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 June 12, 2004.

Audit Observation, Show Cause Notice and Order-in-Original:

- Issuance of audit observation is certainly a blessing in disguise. It helps to either avoid the process of adjudication or restrict the quantum of demand to the extent of contentious / genuine issues.
- It is not obligatory for tax officers to issue audit observation prior to the issuance of show cause notice.
- It is advisable to firstly examine show cause notice on technical grounds such as time limitation, jurisdiction, guess work, proper opportunity of hearing, etc.
- Fact finding exercise should be comprehensive and rule of “substance over form” could be vital.

Audit Observation, Show Cause Notice and Order-in-Original:

- Imposition of default surcharge and penalties should always be challenged if the tax officer has not proved the mala-fide intent on the part of taxpayer to evade the tax.
- Reply to Show Cause Notice generally emerges as a vital source to build up a strong case before the appellate / litigation forums.
- Close coordinated efforts pay a lot during adjudication proceedings.
- Quality of presentation of documents and reconciliation helps to avoid adverse orders.

Audit Observation, Show Cause Notice and Order-in-Original:

- Documenting the hearing proceedings and attendance is also critical.
- Importance of taking global view.
- Use of connotation 'without prejudice' while arguing the grounds either factual or legal.
- Always determine the liability taking effect of input tax, if any, while responding to show cause notice or assessment notices.

Guidelines for Taxpayers for Audit / Compliances:

- It is advisable to keep the print-out of Supplier(s) and Customers Active Taxpayer List (ATL) Status. This is all the more important now in wake of the amendment made vide Finance Act, 2022 in Section 3(1A) of the Sales Tax Act, 1990.
- Payments are to be made by Crossed Cheques for the amount exceeding fifty thousand rupees except for the payments of utility bills as required under sub-section (1) of Section 73 of the Sales Tax Act, 1990.
- Similarly, it is also mandated as per sub-section (3) of Section 73 of the Sales Tax Act, 1990, that the payments received on account of Sales should be deposited in the business bank account of the Supplier (Seller).

Guidelines for Taxpayers for Audit / Compliances:

- It is advisable that the taxpayer should prepare monthly reconciliation of bank credits with receipts/revenue as these days the Department is focused on the same and adds the difference (in any). Although there is no deeming concept under the Sales Tax Act, 1990.
- Reconcile purchases appearing in the Sales Tax Return with the purchases declared in the Income Tax Return.
- Reconciliation of Annexure-F with the Closing Stock of Income Tax.

Thank you

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