

Sindh Sales Tax on Services

Sindh Finance Act 2017 & Notifications

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Overview

- ❑ Franchise – Tax Framework Modified
- ❑ Increase in period for claiming input tax paid on goods and services
- ❑ Rate of Sales tax on Travel Agents & Tour Operators, Renting of Immoveable Property Services, indenting Services, and Call Center services has been reduced
- ❑ Sindh Sales Tax imposed on amount of reimbursement of salaries and allowances under labour and manpower services.
- ❑ Automatic stay on payment of 25% of tax demand.
- ❑ Adjustment of input tax on installment basis against capital goods, machinery and fixed assets
- ❑ Opportunity for filing of appeal for de-registration

Definitions

Franchise – Section 2(46)

- ❑ The definition of franchise has been amended to provide legal backing to Rule 36 of the Sindh Sales Tax on Services Rules, 2011 which imposes Sindh Sales Tax on such agreement where consideration does not exist.
- ❑ Rule 36(6) has also been deleted. By virtue of such amendment, an option to charge SST @ 13% has been done away with. Now, franchise services @ 10% enjoys no input tax adjustment.
- ❑ Similar changes had been made for 'Intellectual property services'.
- ❑ An explanation is added in Rule 36(2) which specify the value of franchise services @ 10% of turnover against consideration which is not associated with franchise fee, royalty, technical fee for fee for intellectual property.

Definitions

Issues

- ❑ Validity of Rule 36(2) prior and after amendment in the definition of 'franchise'.
- ❑ Bar on Input Tax Adjustment due to withdrawal of option for 13% sales tax on franchise services
- ❑ Effect of explanation at Rule 36(2): Prospective or Retrospective
- ❑ Application of sales tax on use of Name & Logo under Intellectual Property Services

Definitions

Place of Business– Section 2(64)

The definition of term 'place of business' has been enhanced which also covers economic activity if carried out in Sindh through:

- Virtual Presence
- Website
- Web Portal
- Any other form of e-commerce by whatever name called or treated.

Example: Recruitment Services, Software Related Services, etc.

Programme – Section 2(67B)

The scope of term 'Programme' has been widened 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

Both service provider and service recipient have been made 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.

The term 'tax due' includes 'tax to be withheld or deducted' by the service recipient.

Persons Liable to Pay Tax – Section 9

Issues

- ❑ Whether the service recipient may be penalized for the wrong doing of the service provider ? Constitutional Implications !
- ❑ Double tax implications on service recipient, in case of services attracting 100% withholding in the hands of recipient of services

Practical Implication

Both the service provider and service recipient to develop a sound relationship among themselves to avoid unnecessary exposure of tax payment that may arise on default of either party.

Nevertheless, it appears to be a harsh provision. The Superior Courts have pronounced judgments in favor of taxpayers in identical matters envisaged under Sales Tax Act 1990.

Input Tax Credit not allowed – Section 15A

Input tax is not claimable paid on Goods or Services which are liable to sales tax (federal or provincial sales tax) at reduced rate or fixed rate or lesser than 13%

Rule 22A has been transformed to the main statute.

Telecommunication sector will be entitled to claim input tax upto 17% on purchase of goods and services.

All such restrictions negate and violate the principle of equity and equitable taxation.

Adjustment of Input Tax Paid on certain Goods and Services - Section 15B

Input tax on purchase of the capital goods, machinery and fixed assets as are classified under Chapters 84 and 85 of the First Schedule to the Customs Act, 1969 would be allowed in twelve equal monthly installments.

Practical Implication

- Stuck of the cash flow
- Undue reconciliation exercise for taxpayer

Assessment of Tax -Section 23

Time limit of issuance of assessment order has been increased from 120 days to 180 days.

This apparently has been done to avoid adverse judgments from superior courts.

Short Paid Amounts Recoverable without Notice – Section 47A

SRB officer can recover 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.

Such short-payment of tax along with default surcharge can be recovered from such person by attaching his bank accounts.

No penalty under section 43 of the Act can be imposed unless a show cause notice is issued to such person.

Legal Implication

Similar provision i.e. Section 11A is available under the Sales Tax Act, 1990 against which the High Court has already declared such recovery action as null and void.

Monitoring or Tracking by Electronic or Other Means – Section 54A

A new Section 54A is inserted whereby SRB is empowered to specify procedure for monitoring or tracking of provision of service or services through electronic or other means.

SRB may also devise and implement an electronic system for transferring the information to the computer systems of the Board on real time basis or otherwise.

Penalty

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.

Appeals – Section 57

As a positive step, the 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.

Previously, this remedy was not available under the SSTSA.

Automatic Stay against Demand – Section 66

The officer of SRB can restrain from issuing 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.

Tax due includes penalty and default surcharge.

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 inserted whereby the SRB is empowered to require any authority, including a regulatory authority, which is competent to issue or renew licenses or permissions for not issuing or renewing such licenses or permissions unless the licensee or the permission-holder submits the evidence that he is duly registered with SRB.

Examples:

- Cable Operators
- Construction Services
- Telecommunication
- Engineering Consultant

Service of Orders and Decisions - Section 75

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.

Implication

Taxpayers' email addresses to be updated.

Condonation of Time-Limit - Section 81

An explanation has been inserted which clarifies that condonation for time limit in respect of any act or thing to be done under SSTSA is now available to persons registered under the SSTSA and 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, 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.

This poses a serious problem over the interpretation of law adopted by the service provider while exempting any service from sales tax.

Amendments in Sindh Sales Tax on Services Rules, 2011

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

Rules	Changes
22(1)	Period for claiming input tax paid on goods and services has been increased to 6 from 4 tax periods.
42E(3)	<p>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.</p> <p>Recently, SHC granted interim stay on aforesaid change in Rule 42E(3)</p>
SST-03	The column for 'Reasons for non-creditable input (quote section or rule)' has been added in the return.

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.

Earlier, 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 neither invoices / bills nor collects any extra charge / amount or surcharge on the value of its services.

Changes in Reduced Rate Regime

Notification SRB 3-4/11/2017 dated 5 June 2017 - Effective from 1 July 2017

S. No.	Description of Services	Tariff Heading	Previous Rate	Existing Rate
1	Travel Agents	9805.5000	10%	8%
2	Tour Operators	9805.5100	10%	8%
3	Renting of Immoveable Property Services <i>Subsequently, SHC has held that merely giving an immovable property by the landlord to a tenant on rent or consideration does not involve any element of service. Accordingly, the SHC has struck down imposition of Sindh Sales Tax on Rent.</i>	9806.3000	8%	3%

Changes in Reduced Rate Regime

Notification SRB 3-4/11/2017 dated 5 June 2017 - Effective from 1 July 2017

Reduction in Sindh Sales Tax Rates

S. No.	Description of Services	Tariff Heading	Previous Rate	Existing Rate
4	Services provided or rendered by an indenter 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.	9819.1200	13%	3%
5	Services provided or rendered by a call centre 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.	9835.0000	13%	3%

**THANK
YOU**