



SEMINAR ON FINANCE ACT, 2022

by

KARACHI TAX BAR ASSOCIATION

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PRESENTATION ON

SALES TAX IN FINANCE ACT, 2022

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Overview of the Amendments in Sales Tax Act, 1990:

- **Section 2(12) and 2(33):** Addition is made in the definition of “Goods” and “Supply” to include Production, Transmission and Distribution of Electricity.
- **Section 2(29A):** Amendment made in the definition of Sales Tax to exclude fee & service charges imposed and collected U/s.76.
- **Section 2(43A):** Scope of Tier-1 Retailers is expanded by bringing in Jewelers whose business place is more than 300 Square Feet.
- **Section 3(7):** Online Market Places are now required to withhold tax @ 1%. Further, exclusion of services chargeable under Provincial Enactment have been from the purview of Withholding.

Overview of the Amendments in Sales Tax Act, 1990:

- **Section 3(11):** Sub-section (11) has been inserted to bring in any person and/or class of persons to integrate their business with the Board's Computerized System for real time reporting of sales in such mode and manner and from such date as may be prescribed.
- **Section 6(5):** Sub-section (5) has been inserted to allow payment of Sales Tax on installments basis by the Board to the Federal or Provincial Governments or any public sector organization on the import or supply of any goods or class of goods subject to such conditions, limitations as may be specified.
- **Section 8B(1):** Amendment has been made to exclude Public Limited Companies listed on Pakistan Stock Exchange which were earlier given exclusion from application of Section 8B(1) through Finance Act, 2021.

Overview of the Amendments in Sales Tax Act, 1990:

- **Section 14(AB):** Section has been inserted to provide power to the Board to Dis-continue Gas and Electric Connections of:
 - (a) Any person, including tier-1 retailers, who fail to register for sales tax purpose or
 - (b) Notified tier-1 retailers registered but not integrated with the Board's Computerized System:

Provided that upon registration or integration, as the case may be, the Board shall notify the restoration of their gas or electricity connection through Sales Tax General Order.

- **Section 23(1)(b) - Section 8(1)(m):** Amendment has been made to mention NTN or CNIC of supplies made to unregistered distributors. Rest of the persons are now excluded from this ambit though they will continue to pay further tax @ 3%.

Overview of the Amendments in Sales Tax Act, 1990:

- **Section 33: Offences and Penalties:**

Serial No. 24 insertion of QR Code has been made in addition to requirements already there.

Serial No. 25A has been inserted to re-introduce heavy penalties on Tier-1 Retailers who fail to integrate their business.

- **Section 33A** which prescribes powers to initiate criminal proceedings against the authorities has been omitted.
- **Section 47A:** Concept of Alternative Dispute Resolution has been substituted to bring it in line with the concept available under the Income Tax Ordinance, 2001.

Overview of the Amendments in Sales Tax Act, 1990:

- **Section 74:** Amendment has been made to provide cover to the FBR to condone the time limit even after the expiry of such time limit to nullify the effect of judgement of Hon'ble Supreme Court of Pakistan in case of CIR v. Sarwaq Traders dated 12-05-2022 and another case of FBR v. Abdul Ghani reported as 2021 PTCL 254.
- **Third Schedule: S. No. 7** has been amended to bring-in all kinds of detergents under Third Schedule to extend the scope.
- **Third Schedule: S. No. 32** of Third Schedule and S. No. 52 of Eight Schedule have been omitted and now import and supply of Fertilizers are exempted from Sales Tax by inserting entry at S. No.168 of Table-I of Sixth Schedule.

Overview of the Amendments in Sales Tax Act, 1990:

- **Fifth Schedule: S. No. 17** has been inserted to allow zero-rating to Fat Free Milk sold in retail packing which was earlier subject to tax at reduced rate of 10% under Eight Schedule under Entry No. 60.
- **Fifth Schedule: S. No. 17** has been inserted to allow zero-rating of local supplies of raw materials, components, parts and plant and machinery to registered exporters authorized under Export Facilitation Scheme, 2021. This is subject to such conditions, limitations and restrictions as specified by the Board.
- **Sixth Schedule:** Certain exemptions restored / New amendments inserted.

Overview of the Amendments in Sales Tax Act, 1990:

- **Eight Schedule: S. No. 25** relating to reduced rate of 5% on Agricultural Tractors is omitted and now Tractors are exempted from levy of Sales Tax by inserting S. No.168 in Sixth Schedule.
- **Eight Schedule: S. No. 47** amended and now locally produced coal has been enhanced to 700 per metric tonne or 17% ad valorem, whichever is higher.
- **Eight Schedule: S. No. 75** has been omitted regarding import of electric vehicle in CBU conditions. However, this entry is now placed at S. No. 79 with condition of 50kwh battery or below.
- **Eight Schedule: S. No. 80** has been inserted to allow reduce rate of 1% on electric transport buses of 25 seats or more.

Overview of the Amendments in Sales Tax Act, 1990:

- **Eleventh Schedule: S. No. 4** of the Schedule now excludes companies exporting surgical instruments from becoming Sales Tax Withholding Agent.
- **Twelfth Schedule:** Exemption from levy of minimum value addition tax at the rate of 3% on import of raw materials and intermediary goods imported by a manufacturer for in-house consumption is proposed to be withdrawn on import of following:
 1. Compressor Scrap (tariff heading 7204.4940)
 2. Motor Scrap (tariff heading 7204.4990)
 3. Copper Cable Cutting Scrap (tariff heading 7404.0090).

Further Tax – Section 3(1A):

- **Further tax at the rate of 3%** is chargeable on taxable supplies made to a person who is otherwise liable to be registered under the Sales Tax Act, 1990 (“Act”), however, **has not obtained a sales tax registration number**.
- The Finance Act has broaden the scope of further tax on **supplies made to registered persons who are not Active Taxpayers**.
- A Registered Person can be removed from the Active Taxpayers List (ATL) if any of the four situations provided in sub-section (1) of Section 2 of the “Act” are not followed:

Further Tax – Section 3(1A):

- (a) who is blacklisted or whose registration is suspended in terms of section 21; (Sales Tax)
- (b) fails to file the return under section 26 by the due date for two consecutive tax periods; (Sales Tax)
- (c) who fails to file an Income Tax return under section 114 or statement under section 115; (Income Tax)
- (d) who fails to file quarterly or an annual withholding tax statement under section 165 of the Income Tax Ordinance, 2001; (Income Tax)

Further Tax – Section 3(1A):

PRACTICAL PROBLEMS:

- **No mechanism has been provided by the FBR** as to how this will work!
- **No Real Time mechanism** for Sales Tax ATL exists!

Questions:

Whether it will work on the basis of Sales Tax Return which is filed after the end of the Month? Or

Whether at the time of purchase, the Supplier has to check the Status of the buyer? Or

Further Tax – Section 3(1A):

Questions:

What will happen if the buyer is removed from the ATL subsequently?

How would Supplier be able to explain the Officer Inland Revenue, if at the time of supply, the buyer was Active Taxpayer?

How would the tax be charged if at the time of issuance of invoice the buyer is Active and subsequently at the time of filing of monthly Sales Tax Return, the buyer becomes inactive?

Further Tax – Section 3(1A):

Questions:

No option to check if the buyer has filed the Statement U/s.165 of the Income Tax Ordinance, 2001?

Suggestions / Solution:

If at the time of filing of monthly Sales Tax Return, the buyer is available of ATL, than its subsequent removal should be made basis to question the Supplier.

Real-time ATL like Income Tax should be available.

Manual charging of Tax in the Sales Tax Return form Should be incorporated.

Further Tax – Section 3(1A):

Suggestions / Solution:

Sales ATL to also include the feature of checking compliance of Section 165 of the Income Tax Ordinance, 2001.

Till such changes are made in the Sales Tax Rules read-with Section 21A of the Act and Software is amended, this amendment should be kept in abeyance.

Other Retailers – Section 3(9):

Retailers other than Tier-1 Retailers are taxed through monthly electricity bills and after paying sales tax on electricity bills, other retailers were not obliged to get themselves registered under the Act.

The Finance Bill, revamped the scheme of taxation for Other Retailers and it was proposed to bring them under Fixed Tax Regime whereby only one monthly tax was required to be paid in lieu of Income Tax and Sales Tax.

Following table will exhibit the position prior to Finance Bill, position proposed vide Finance Bill, position after Finance Act and Current scenario:

Other Retailers – Section 3(9):

Monthly Electric Bill	Rates Prior to Finance Bill	Finance Bill	Finance Act	Post Finance Act
Upto PKR 20,000	5.00 %	PKR 3,000	PKR 3,000	5.00 %
Upto PKR 30,000	5.00 %	PKR 3,000	PKR 3,000	5.00 %
Upto PKR 50,000	7.50 %	PKR 5,000	PKR 5,000	7.50 %
Exceeds PKR 50,000	7.50 %	PKR 10,000	PKR 10,000	7.50 %
FBR Prescribed Persons	xxx	PKR 50,000	PKR 200,000	Xxx

Vide Finance Act, 2022, the proposed Fixed Tax on prescribed person was increased from PKR 50,000 to PKR 200,000.

Further, it was also proposed to increase the fixed tax by 100%, if the Other Retailer is not appearing on Income Tax ATL.

Other Retailers – Section 3(9):

However, post Finance Act, the trader's bodies all over Pakistan opposed this amendment and consequently, the Government had to rolled-back the entire scheme of Fixed Tax imposed on retailers along with the 100% increase in rate in case of Non-ATL (Income Tax) with the caveat that after September 2022, this proposal would be reviewed again (minutes of meeting held on 04-08-2022).

It is further suggested from this august forum that KTBA should also take-up the matter regarding levy of further tax and extra tax on service providers such as tax consultants, lawyers and doctors etc., who otherwise are not obliged to get registered under the Act with FBR.

Sixth Schedule – Amendments and Insertions (Restoration):

Following amendments are made under Sixth Schedule, Table-1:

S. No.	PRIOR TO FINANCE ACT		AFTER FINANCE ACT	
	Description	Tariff Heading	Description	Tariff Heading
32.	Newsprint and <u>educational textbooks</u> but excluding brochures, leaflets and directories	4801.0000, 4901.9100, 4901.9990 and 4903.0000	Newsprint and <u>books</u> but excluding brochures, leaflets and directories	Respective headings
82.	Paper weighing 60 g/m2, <u>art paper and printing paper</u> for printing of Holy Quran imported by Federal or Provincial Governments and Nashiran-e-Quran as per quota determined by IOCO	4802.5510, 4810.1990, 4810.1910 and 4802.6990	Paper weighing 60 g/m2, <u>art paper, printing paper and art card</u> for printing of Holy Quran imported by Federal or Provincial Governments and Nashiran-e-Quran as per quota determined by IOCO	4802.5510, 4810.1990, 4810.1910, 4802.6990 and 4810.2900

Sixth Schedule – Amendments and Insertions (Restoration):

S. No.	PRIOR TO FINANCE ACT		AFTER FINANCE ACT	
	Description	Tariff Heading	Description	Tariff Heading
45.	Dextrose and saline infusion giving sets along with empty non-toxic bags for infusion solution, Dextrose and saline infusion giving sets, Artificial parts of the body, Intra-Ocular lenses and Glucose testing equipment.	9018.3910, 9018.3920, 9021.3100, 9021.3900 and 9027.8000	Dextrose and saline infusion giving sets along with empty non-toxic bags for infusion solution, Dextrose and saline infusion giving sets, Artificial parts of the body, Intra-Ocular lenses and Glucose testing equipment.	9018.3910, 9018.3920, 9021.3100, 9021.3900 and <u>Respective headings</u>
120.	Diagnostic kits or equipment	3822.0000	Diagnostic kits or equipment	<u>Respective headings</u>

Sixth Schedule – Amendments and Insertions (Restoration):

Following entries inserted / restored (earlier deleted by Finance Supplementary Ordinance) under Sixth Schedule:

S. No.	Description
163	Goods imported by various agencies of the United Nations , diplomats, diplomatic missions, privileged persons and privileged organizations.
164	Photovoltaic cells whether or not assembled in modules or made up into Panels (Solar Panels) .
165	Goods imported by or donated to hospitals run by the non-profit making Institutions.
166	Goods excluding electricity and natural gas supplied to hospitals run by the charitable hospitals of fifty beds or more.
167	Goods temporarily imported into Pakistan , meant for subsequent exportation.
168	Fertilizers.

Sixth Schedule – Amendments and Insertions (Restoration):

S. No.	Description
169	Oil cake and other solid residues.
170	Tractors.
171	Seeds for sowing.
172	Machinery, equipment and materials imported either for exclusive use within the limits of Export Processing Zone or for making exports therefrom and goods imported for warehousing purpose in Export Processing Zone.
173	Goods produced or manufactured in and exported from Pakistan which are subsequently imported in Pakistan within one year of their exportation.
174	<p>Import of various cinematographic machinery and equipment which fall under Serial no 32 of the Table-I of Fifth Schedule to the Customs Act 1961 has been declared as exempt through the Act.</p> <p>However, <u>similar entry exists under Eighth Schedule also under S. No. 53,</u> therefore, there exist some confusion.</p>

Sixth Schedule – Amendments and Insertions (Restoration):

Following entry inserted in Table-2 of the Sixth Schedule:

S. No.	Description
54.	<p>Supply of “prepared food or foodstuff by restaurants and caterers” is now exempted from Sales Tax under Table-II of Sixth Schedule.</p> <ul style="list-style-type: none"> • Taxed through the Finance Act 2018 • Services of restaurants and caterers have also been also covered under the provincial sales tax laws. <p>The CM of Sindh announced in Budget Speech, Sindh sales tax on “Services of Toll Manufacturing” will be withdrawn.</p> <p>Apparently the suggested amendments would now rest the dispute between the Federal and Provincial tax authorities on above issues.</p>

Sixth Schedule – Amendments and Insertions (Restoration):

Following entry inserted in Table-3 of the Sixth Schedule:

S. No.	Description
22.	<p>1. Machinery, equipment and spares meant for initial installation, balancing, modernization, replacement or expansion of projects for power generation through hydel, oil, gas, coal, nuclear and renewable energy sources.</p> <p>2. Construction machinery, equipment and specialized vehicles, excluding passenger vehicles, imported on temporary basis as required for the construction of project.</p> <p>The amendment is made subject to conditions prescribed therein.</p>

Eighth Schedule – Jewelry:

The Finance Supplementary Act, 2022 omitted S. No. 64 of the Eighth Schedule relating to reduced rate of tax on articles of Jewelry and precious items.

The Finance Bill 2022 again proposed to tax imported supply and local supply of Jewelry @ 4% and 3% respectively with no input adjustment. This amendment was in line with Jewelers being brought-in under Tier-1 Retailers.

However, as per Finance Act, 2022, following entry is inserted in Eighth Schedule:

Eighth Schedule – Jewelry:

S. No.	Description	Rate of Tax	Condition
78.	Supply of locally manufactured articles of jewellery, or parts thereof, of precious metal or of metal clad with precious metal.	3%	No input tax shall be adjusted .

This means that only locally manufactured Jewelry and other locally manufactured precious metal articles are subject to reduce rate with no input adjustment. Effectively, imported Jewelry and other precious articles would be subject to standard rate of sales tax.

Eighth Schedule – Pharmaceutical Sector:

The Finance Supplementary Act, 2022, inserted S. No. 19 under the Eighth Schedule to zero-rate Pharmaceutical Sector (Pharma Sector) and deleted S. No. 104 and 105 from Sixth Schedule.

Consequently, the raw-material of Pharma Sector was subjected to sales tax @ 17% and Pharma Sector was required to not only file sales tax return but also apply for refunds (which were held-back due to consumption and other issues).

Resultantly, a lot of challenges were faced by the Pharma Sector and general public alike, therefore, considering the ground realities, the Government vide Finance Act, 2022 deleted S. No. 19 from the Eighth Schedule and following entries have been inserted in Eighth Schedule:

Eighth Schedule – Pharmaceutical Sector:

S. No.	Description	Rate of Tax	Condition
81.	Manufacture or import of substances registered as drugs under the Drugs Act, 1976 (XXXI of 1976).	1%	Subject to the conditions that: (i) Tax charged and deposited by the manufacturer or importer, as the case may be, shall be final discharge of tax in the supply chain. (ii) No input tax shall be adjusted by the manufacturer or importer.
82.	Active Pharmaceutical Ingredients, excluding excipients, for manufacture of drugs registered under the Drugs Act, 1976 (XXXI of 1976) or raw materials for the basic manufacture of pharmaceutical active ingredients.	1%	Subject to the conditions that: (i) DRAP shall certify item-wise requirement of manufacturers of drugs and APIs and in case of import shall furnish all relevant information to Pakistan Customs Computerized System; and (ii) No input tax shall be adjusted by the manufacturer or importer.

Eighth Schedule – Pharmaceutical Sector:

- Now pursuant to amendments, sales tax on active pharmaceutical ingredients meant for the manufacturing of drugs or raw materials will be taxed at the rate of 1% without any adjustment of input tax.
- Similarly, the import of substances registered as drugs would also be taxed at the rate of 1% at import stage.
- The tax charged / paid by the manufacturer or importer would be the final discharge of tax in the supply chain. Effectively, wholesalers / distributors or retailers dealing only in supply of drugs have been excluded and would not charge sales tax.

Eighth Schedule – Pharmaceutical Sector:

- There are practical problems in filing the Sales Tax Returns by the Pharma Sector, such as:
 1. Commercial Importers who have paid 1% tax as per Eight Schedule are being asked to pay 3% value addition tax also which is against the amendment made in the Act.
 2. As aware that the subsequent supply is exempt from levy of sales tax; however, the Sales Tax Return till date is not catering this amendment which should be corrected forthwith to enable the registered persons to file the returns within time!

Thank you

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