

FEDERAL SALES TAX **TAX PROPOSALS**

FOR THE FEDERAL BUDGET 2021 – 22

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FEDERAL SALES TAX

1.0 Diminishing the Costs of Doing Business						
Proposed Amendments / Clarifications / Explanations in Sales Tax Act, 1990 and allied Rules						
Sr. #	Issue	Legislation	Description	Impact	Proposed Changes	Expected Outcome
1.1	Charitable Institutions / Non-Profit Organizations		<p>Unlike Income Tax Law, there is no concept of allowing exemption / zero-rating of sales tax for charitable institutions under the Sales Tax Act, 1990 (STA) except the following exemption available under clause 52A of Sixth Schedule to the Sales Tax Act 1990:</p> <p><i>"52A. Goods supplied to hospitals run by the Federal or Provincial Governments or charitable operating hospitals of fifty beds or more or the teaching hospitals of statutory universities of two hundred or more beds."</i></p>	None of the charitable institutions, except some hospitals fall within the ambit of aforesaid clause 52A.	<p>Following amendment is suggested to provide zero-rating for charitable institutions that are considered and recognized as non-profit organizations under the Income Tax law:</p> <p>In the Fifth Schedule, the following entry should be inserted:</p> <p><i>"Supplies to a non-profit organization as defined in Section 2 (36) of Income Tax Ordinance 2001."</i></p>	Charitable institutions / Non-profit organizations will be saved from undergoing unnecessary hardships and it also increases the cost.
1.2	Withholding on purchases from unregistered person.	Section 3, 7 & 11 th Schedules	Withholding rate for purchases from unregistered persons had been enhanced to 5% vide Finance Act, 2020.	The action was intended to bring the undocumented sector in the tax net, however for certain sectors empirical evidence shows that due to the large size of undocumented segment it has impacted the documented sector more adversely resulting in high cost of doing business for such compliant persons in comparison to their unregistered counterparts.	It is proposed that either the withholding rate be reduced to 1% OR such tax withheld be allowed as admissible input tax to the registered person upon providing CNIC/ Incorporation ID of such unregistered supplier. FBR can use such information to bring the unregistered sector in the tax net.	It will reduce the cost of doing business for the compliant registered persons who otherwise are compelled to purchase their raw materials from the unregistered persons.

				On the other, hand no significant registrations have been witnessed as result of increased withholding rate.		
1.3	Recovery of Sales Tax on Bad debts	Section 7 & 73	<p>Under the STA, both input / output tax is paid on monthly basis even if the payment is not received / paid.</p> <p>Further, in terms of Section 73 input tax on purchases with respect to which the buyer fails to make payment within 180 days is disallowed. However, there is no provision allowing the supplier reversal of such tax paid at the time of issuance of invoice if corresponding receivable are irrecoverable and written off.</p>	<p>It increases the cost of doing business for the registered person.</p> <p>Sales Tax is a consumption tax and it has to be neutral for the businesses. Therefore, as per best practices of VAT concept-based tax laws around the globe, supplier is allowed adjustment on account of irrecoverable sales tax in subsequent tax periods.</p>	It is proposed that section 7 be amended to include a provision for allowing adjustment of irrecoverable sales tax paid during the tax period of issuance of invoice in subsequent tax period subject to appropriate conditions.	It will reduce the cost of business for the registered persons.
1.4	Restriction on claiming input tax in excess of 90% of the output	Section 8B	Section 8B imposes restriction whereby input tax in excess of 90% of the output tax cannot be claimed and is required to be carried forward to the next tax period. Hence, 10% of output tax is mandatorily required to be paid by the taxpayer which results in accumulation of legitimate input tax on one hand while the same amount of sales tax is required to be paid on other hand. This leads to a unnecessary financial burden for the taxpayer and at the	Section 8B results in accumulation of legitimate input taxes and leads to an unnecessary financial burden for the taxpayer in the form of mandatory payment of 10% of output tax with the return.	Section 8B should be deleted from the Act.	This amendment will lead to ease of doing business for the taxpayers.

		same time there is this apprehension that 10% value addition must mandatorily be made.			
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INDIRECT TAX

2.0 Incentivizing Increased Industrialization						
Proposed Amendments / Clarifications / Explanations in Sales Tax Act, 1990 and allied Rules						
Sr. No.	Issue	Legislation	Description	Impact	Proposed Changes	Expected Outcome
2.1	Advance Ruling Authority		There is no provision under the STA, enabling a person to seek advance ruling on any sales tax matter from the FBR; whereas under the Income Tax Ordinance, 2001, this option is available to a non-resident under Section 206A.	Due to absence of such option, taxpayers are exposed to uncertainty with respect to sales tax implication on their complex business deals. Lack of clarity at the outset converts into expensive litigation at later stages.	It is proposed that concept of advance ruling under the STA may also be introduced.	It will provide certainty to the persons regarding tax liability under the STA with respect to complex business deals particularly in merger/acquisition deals involving foreign investment. Hence, it will also help in attracting foreign direct investment.

INDIRECT TAX

3.0 Bringing Simplicity in the Law						
Proposed Amendments / Clarifications / Explanations in Sales Tax Act, 1990 and allied Rules						
Sr. #	Issue	Legislation	Description	Impact	Proposed Changes	Expected Outcome
3.1	Time of Supply	Section 2(44)	The definition of "time of supply" was amended vide Finance Act, 2013 to subject the advance receipt to sales tax which has created number of practical problems. The same concept was earlier introduced vide Finance Act 2007 which was later withdrawn due to impracticality.	The registered persons besides other practical issues has to undertake tremendous exercise of reconciliation between the books of accounts where sales are recorded on the basis of delivery of goods with the sales tax returns where sales tax is paid on advance receipts. Furthermore, this also leads to discrepancies in CREST resulting in hardships to taxpayers.	We, therefore, propose the withdrawal of the said amendment made through the Finance Act, 2013.	To avoid unnecessary hassle for taxpayers as charging of sales tax on advance receipts will not create any additional revenue for the Government.
3.2	Friction Between Federal Board of Revenue And Provincial Revenue Board/Authorities		Federal Board of Revenue and Provincial Revenue Board/Authorities (SRB / PRA / KPK/BRA) have locked horns over taxation of services, such as Toll Manufacturing, Franchise Services, Restaurants, etc.	Extreme unrest and problem amongst the business community. This situation is causing a lot of confusion, harassment and litigation.	<p>Federal and Provincial Sales Tax Authorities should form a fully empowered commission to bring harmony in the sales tax laws dealing with services, particularly focusing on following:</p> <p>(i) Principle for taxation of services (origin, destination or mix);</p> <p>(ii) Mechanism for adjustment of taxes collected by Authorities, without causing botheration to taxpayers;</p> <p>(iii) Harmonization of Tariff headings and definition / scope</p>	Stable tax regime will ensure better business environment, promote trust amongst FBR / SRB / PRA / KPK/ BRA; and result in harmony between Federation and Provinces.

					<p>of services;</p> <p>India has recently brought in constitutional amendment to harmonize implementation of VAT regime in its true spirit. EU has also streamlined VAT regime amongst independent countries. So it is high time that we also bring reforms to reduce litigation, collect more revenues, and provide relief to taxpayer from the ambiguities impeding the implementation of Taxation on Services.</p>	
3.3	Inadmissible Input Tax	Section 73	<p>In case of payment is not made by the buyer within 180 days, his corresponding input tax becomes inadmissible. Moreover, section 73 does not cater transactions where payments are made by some other person / guarantor on behalf of the buyer. Part payment of invoice, to the extent of sales tax is also not catered.</p> <p>Further, there are circumstances under which businesses may not be required to pay the consideration at all e.g. where taxable goods are exchanged with goods / services.</p> <p>For Income Tax Purposes, FBR's Circular 01 of 2009 allows</p>	<p>In today's environment, it is common practice that purchases and sales are being made from / to the same party. Hence, ledger adjustment should be allowed so that taxpayers do not have to go through hassle of actual payments.</p> <p>The anomalies create hardship for genuine taxpayers as they are not able to claim their legitimate input tax.</p>	<p>It is recommended such anomalies may be taken care off and removed. It is not out of place to state that the tax is paid on monthly basis on the basis of return and there are judgments available where courts have allowed adjustment of input tax where payments are made after 180 days.</p>	<p>The genuine taxpayers will be benefitted and it will restore their confidence</p>

			adjustments of payment through ledger accounts. However, there is no provision of the same under STA.			
3.4	Initiation of Recovery Action	Rule 71	By virtue of section 45B of STA, a registered person aggrieved by any decision, may file an appeal within thirty days of the date of receipt of the order. On the contrary, under Rule 71 of the Sales Tax Rules, 2006, proceeding of recovery of impugned tax may be initiated after thirty days from the date of order.	The section and the rule are not harmonized. Sometimes order is served on the registered person after many days of the date of order and the recovery proceedings may be initiated under the Rule even if the time limit provided for filing of the appeal has not lapsed.	Rule 71 should be amended to provide commencement of recovery proceedings after thirty days from the date of receipt of the order.	To keep harmony between the Act and the Rules in the spirit of natural justice.

INDIRECT TAX

4.0 Simplifying Administrative Tasks						
Proposed Amendments / Clarifications / Explanations in Sales Tax Act, 1990 and allied Rules						
Sr. #	Issue	Legislation	Description	Impact	Proposed Changes	Expected Outcome
4.1	De-Registration	Section 21	At present finalization of sales tax de-registration process takes at least 6 to 10 months and in some cases more than one year.	Taxpayers suffer from uncertainty, mental torture and suspense about the fate of their cases.	The process of de-registration should be completed within three months. If the application for de-registration is not disposed of within the prescribed time period then applicant be considered as de-registered automatically.	Taxpayers shall be saved from unnecessary hardships.
4.2	Simplification of Sales Tax Return Form	Section 26	<p>The existing sales tax return contains complicated and unnecessary annexures, which are time consuming and require proper staff.</p> <p>Moreover, w.e.f. July 2016, registered persons are required to file Annexure C & Annexure I by 10th of every month.</p>	<p>The forms such as annex 'F' and annex 'H' are simply not so relevant or of commensurate advantage and dire need of the Department particularly after introduction of electronic regime.</p> <p>Registered persons are often not able to file the required annexures by 10 of every month due to certain e-filing issues resulting in notices from the tax department.</p>	Condition for filing unnecessary annexures should be curtailed at maximum level to achieve simplification, such details if essentially requires, can be made part of annual return.	<p>Less cost of compliance and book keeping for taxpayer.</p> <p>The registered persons will be able to file their sales tax returns within due date without any hassle and technical problems.</p>
4.3	Issues Related To Refunds	Annexure-H	From July 1, 2019, FBR has implemented systems for expeditious processing of sales tax refunds, for which taxpayers are required to file Annexure H of the sales tax return. However, the registered persons have been	Unless the shortcomings are addressed the objective of faster processing of sales tax refund cannot be achieved.	It is strongly recommended that FBR should resolve the abovementioned issues expeditiously.	This would result in simplified process for the taxpayers.

			<p>facing challenges in filing of Annexure H</p> <p>Annexure H is required to be filed within 120 days from the date of filing of the sales tax return. This condition should be removed and registered persons be allowed to file Annexure H as and when considered feasible by him.</p> <p>b) At present, opening balance of input tax on raw material / other items is allowed to be entered in Annexure H for the tax period July 2019 only. If a taxpayer fails to file Annexure H for July 2019 within the due date or extended date, then he will never be able to file Annexure H for any of the subsequent tax periods. This is against the natural justice and fair play.</p> <p>c) Annexure H filed by the taxpayer is rejected by the system without highlighting any discrepancy or communicating the discrepancy to the taxpayer.</p> <p>d) In case any taxpayer does not want to carry out cumbersome exercise of filing Annexure H on a monthly basis, then such taxpayers should also be given an option</p>		
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			<p>to file Annexure H on an annual basis covering the data from July to June each year.</p> <p>e) Due to lack of clarity and clear cut guidelines from FBR, the taxpayers are matching Annexure-H with Annexure-F which appear inconsistent with the Scheme of Stock Statement and Stock Statement maintained as per accounting records, for the Purchases actually claimed in the Sales Tax return (i.e. Current year + prior month purchases) are being reported, instead of Purchases for the month only.</p> <p>Due to above, Stock Statement is not matched with taxpayer stock records / audited financial statements.</p>			
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INDIRECT TAX

5.0 Broadening the Scope and Equitability of the Law						
Proposed Amendments / Clarifications / Explanations in Sales Tax Act, 1990 and allied Rules						
Sr. #	Issue	Legislation	Description	Impact	Proposed Changes	Expected Outcome
5.1	Separation of Tax Fraud Investigations from normal audit and assessment function	Section 11, 25 & 37	<p>Tax Fraud is a criminal activity and should be dealt with by the tax authorities adopting approach suitable for criminal proceedings. Whereas, for audit of compliant registered persons completely different approach is required. Accordingly, the two tasks require a human resource of different skill set.</p> <p>Presently jurisdiction to conduct both types of audit vests in the same officer which is not only inefficient but also results in harassment of law compliant registered persons.</p> <p>Therefore, the two functions should be segregated.</p>	Segregation of two functions will result in efficient and focused assessment of tax by the tax officers resulting in increased revenue to the exchequer.	<p>Special Directorate should be established to establish to conduct the forensic audit of cases involving tax fraud.</p> <p>If the Tax officer of the concerned has determined that the registered person is involved in tax fraud the case be turned over to the special directorate to carry out further investigation in line with criminal proceeding under other laws.</p>	This differentiation between the law abiding registered persons and those who are engaged in criminal activity will restore confidence in the genuine taxpayers and will create deterrence against tax evasion.
5.2	Time limit to conclude Audit proceedings	Section 25	<p>Presently no time limit has been prescribed under the law to conclude the audit proceedings initiated U/s. 25 of the STA.</p> <p>However, apex court of the country has upheld that such audit is to be concluded within one financial year.</p>	Due to absence of any prescribed time limit, the audit proceedings are unnecessarily delayed for years and registered persons are required to submit records multiple times. Therefore, it is, not only the cause of inefficiency on part of department but also results in increased compliance cost for	It is proposed that a new sub-section be inserted in the aforesaid Section prescribing time limit of one year to conclude such audit proceeding in line with the directions of Honorable Supreme Court of Pakistan	It will save time and cost of registered persons as well as tax officers.

				the registered persons.		
5.3	Time Limitation	Section 9, 26,10, 73& 74	<p>There are multiple time limits which have been prescribed under the STA:</p> <p>a) Revision of Sales Tax Return U/s. 26 - 120 days.</p> <p>b) Limitation for issuance of debit & credit notes. U/s. 9 - 180 days.</p> <p>c) Limitation for submission of refund claim. U/s. 10 - 120 days.</p> <p>d) Limitation for compliance of payment proof. U/s. 73 - 180 days.</p> <p>e) Limitation for condonation U/s. 74 - 365 days</p>	<p>The time limits prescribed under these sections cause unnecessary hassle and botheration for the taxpayers and the registered person has to apply for condonation in getting such time limitation condoned by the concerned tax authorities.</p>	<p>Time limitation in all above situations should be extended upto 365 days and the time limit for condonation by the Officers Inland Revenue should be extended upto 700 days as there is no loss of revenue is involved.</p>	<p>This will result in taxpayer's facilitation and will restore their confidence.</p>
5.4	Adjustment of Sales Tax Refund with Income Tax Liability and vice-versa	Section 10	<p>It has been seen that on a number of occasions registered person's funds are stuck with the Inland Revenue in the form of sales tax refund and at the same time the taxpayer is required to pay income tax at the time of assessment of his income tax liability. Resultantly, the taxpayer has to bear the burden of making payment of income tax liability whereas his own money is lying idly with the Inland Revenue.</p>	<p>Board vide letter C.No. 3(70)STM/99 dated 20th December 1999 has already devised a procedure of inter-tax refund / adjustment; but both sales tax and income tax department are not following the above said procedure.</p>	<p>It is proposed that a very simple and unambiguous procedure may be notified for adjustment of sales tax refund with the income tax liabilities and vice-versa in order to alleviate the unnecessary cash flow problems faced by the registered persons.</p>	<p>Adjustment of refunds and tax liabilities may flow easily.</p>

5.5	Recovery of sales tax from the Withholding Agent where principal tax liability already stands discharged by other registered persons	Section 11	<p>Law requires the payer to withhold certain amount of sales tax from the recipient and deposit the same to the credit of the recipient.</p> <p>In case of default, the tax authorities can recover the amount of sales tax not withheld from the withholding agent.</p> <p>Based on the judgments of the Superior Court, it is now a settled principle of law that if any liability for short paid tax is subsequently discharged then the same cannot be recovered from the taxpayer again, as it would tantamount to double taxation.</p>	<p>Due to absence of any provision catering the issue in the law, under certain circumstances recovery of principal amount of tax from the withholding agent in terms of Section 11(4A) results in double taxation which is something never appreciated by the Superior Courts as well as legislature.</p>	<p>To remove this anomaly, it is proposed that a new sub-section be inserted providing that where the sales tax that was required to be paid or deducted has meanwhile been paid by that person or recovered from the supply chain, no recovery shall be made from the person who had initially failed to pay or deduct the sales tax or had paid or deducted short amount of sales tax.</p> <p>However, the default surcharge, for delay in payment of sales tax, will be recoverable from the person who has failed to pay or deduct or deducted but not deposit the sales tax.</p>	<p>This will prevent recovery of tax from the Withholding agent where the recipient has deposited the entire sales tax himself at the time of filing his sales tax return.</p>
5.6	Time limit for giving appeal effect order	Section 11B	<p>Currently, the Officer is required to issue an appeal effect order under section 11B within one year from the end of the financial year in which appellate order is served.</p> <p>Whereas under section 124A of the ITO, 2001 where direct relief is provided such order is required to be passed within sixty days of service of appellate order.</p>	<p>It is quite longer period for the cases where direct relief has been provided.</p>	<p>Aforesaid section should be amended to providing that the appeal effect in case of direct relief should be issued within a period of 60 days from the date of service of the appellate / court order.</p>	<p>Such amendment will restore confidence of taxpayers.</p>

5.7	Decision in respect question of law by Tribunal and High court are not binding on Commissioner	Section 47B	<p>Under section 124A of the Income Tax Ordinance, 2001 the decisions of the Tribunal and High Court on any question of law are binding on the Commissioner until such decisions are reversed or modified.</p> <p>However, no such provision exists under the STA.</p> <p>Resultantly, matters involving question of law despite having been decided by the ATIR or High Court in favour of registered person are repeated by the tax authorities without respecting the decisions of superior forums.</p>	The registered persons have to suffer unnecessary burden for taking the already decided matter again into appeal process and have to face cash flow issues owing to recovery of demand raised.	It is proposed that a provision similar to section 124A under the ITO, 2001 be inserted to provide binding effect for the lower forums of the decisions of ATIR and High Court on any question of law.	Avoidance of unnecessary hassle to take an already decided matter to appeal process afresh and to abstain the Department from creating unnecessary demands.
5.8	Sales tax on transfer of ownership of business	Section 49(2)	<p>Section 49(2) provides for issuance of zero rated invoices by the transferor on transfer of ownership of a business to the transferee. Hence, the transferor may claim the refund of unadjusted input tax by issuing zero rating invoices to the transferee. This provision is creating hardship in the case of merger transactions, where the merging entity loses its existence and all assets and liabilities such entity are transferred to the</p>	In case of merger/amalgamation schemes, all business bank accounts and assets and liabilities of the transferor (merging entity) are transferred to the surviving entity. Resultantly, it is not practically possible for the transferor to claim input taxes or refunds, which ceases to exist.	An explanation in Section 49 should be provided to the effect that input adjustment or refunds may be claimed by the surviving entity in case of merger and acquisitions.	Tax payers would not be deprived of their legitimate right of input claim owing to mergers and acquisitions.

			surviving entity. Hence, legally and practically, the transferor cannot claim/adjust the refunds since it ceases to exist as a separate legal entity.			
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