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# Audit, Assessment, and Recovery

## KTBA's 8<sup>TH</sup> PDP Session

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# Topics to be covered

- **Audit & Investigation**
- **Assessment of sales tax**
- **Recovery**





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# Audit and Investigation

# Tax Audits

## Types of Audit

- Routine audit of records – Section 25 of STA
- Pre or Post Refund Audit – Chapter-III of Sales Tax Rules, 2006
- Investigation/Enquiry under Section-38 & 38B of STA
- Special Audit under Section 32A of STA – By Qualified Accountants
- Audit / Investigation by Directorate General of Intelligence and Investigation-IR [refer SRO.776(I)/2011, dated 19 August 2011].

# Tax Audit – Section 25 of STA

## Departmental Audit – Section 25(1)

- CIR or his authorized Tax Officer can requisition statutory records or access the records / computers.
- On the basis of records, audit can be conducted once in a year.
- Records can be re-audited, if audited previously by Auditor General of Pakistan
- Order to be passed under Section 11 after completion of audit, as per procedure laid down under Para 39 of STGO No. 3 of 2004, dated 12 June 2004.

# Tax Audit – Provincial sales tax laws

## Pre-audit desk review

- Analytical review
- Trends of input-output ratios, previous results, industry norms, etc.

## Departmental Audit

- Not necessarily once a year
- On the basis of returns / records
- By an officer not less than Assistant Commissioner
- Criteria of selection prescribed in Audit Rules

## Inquiry / Investigation

## Special Audit

# Tax Audit

## ***Basis of Departmental Audit [Rule 3 of Audit Rules-PRA]***

- Irregular or abnormal fluctuations in input tax adjustments including carry forwards;
- Non or short payments of tax amounts declared on the monthly returns or other declarations;
- Unusual variations in inventories;
- Habitual tendency of filing short or misfiled returns;
- Sudden or unexpected downward changes in turnover; and
- Other cogent factor evident from the taxpayer's computer profile over doubts of tax evasion

# Tax Audit

## Scope of special audit

- To determine whether the records, invoices and monthly returns has been maintained and issued correctly;
- To determine whether monthly tax returns reflect correctly 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.



# Investigations – S-38 of STA

- Section 25 itself provides authority of initiating investigation under Section 38 of STA in cases of tax frauds.
- Wide discretion of authorized officer acting on behalf of the Board or Commissioner to access business premises, stocks, records, etc.
- Onus lies on FBR / CIR to prove the tax fraud according to definition.
- Investigations are generally assigned to DG-I&I offices of FBR.
- Section 38 does not provide authority to adjudicate cases, as such assessment/recovery can be enforced through Section 11 of STA.

# Waiver of penalty during the course of audit

- Section 25 allows waiver of penalty 100% and 25% in case of voluntary discharge of sales tax liability with default surcharge before audit and during audit respectively. Yet, no waiver of penalty once show cause notice is issued.
- Similar scheme of waiver is provided under Section 28 of Sindh Act, whereby no penalty is payable if voluntary discharge of tax liability
- If liability is discharge during the course of audit or before issue of show cause notice, then SRB registered person shall effect filing of revised SST return and will be required to pay 25% of penalty along with principal SST and default surcharge.
- Voluntary discharge of liability after show cause notice allows 50% waiver of penalty.

# Selection of cases for audit by Board – S-72B

- Board is empowered to select cases for audit through computer ballot on random or parametric basis.
- Audit will be conducted in accordance with Section 25 of ST Act
- Board shall be deemed to always had the power to select any person or class of persons for audit of the tax affairs.
- Rules framed under Chapter VIA of Sales Tax Rules, 2006, as notified on 28 January 2016.
- Board shall determine the risk parameters who are to be included in balloting.
- Audit parameters are to be based on financial ratios based on history or industrial or national practices, benchmarks, quantum of losses or excessive refunds, compliance history.
- Computer balloting process shall be held in presence or representatives of Chambers of Commerce and Tax Bar Associations.
- On completion of audit, taxpayer shall be intimated on discrepancies through audit report prior to issuance of show cause notice under Section 11 of STA.



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# Assessment of Sales Tax

# Assessment of tax and recovery – S-11 of STA

- Section 36 of STA was omitted vide FA-2012 and merged in S-11.
- Four situations are separately dealt u/s 11 of STA viz-a-viz:
  - ✓ If return is not filed and short-payment is due to any miscalculation.
  - ✓ Non-payment or short payment of tax or claim of inadmissible refund for reasons other than miscalculation.
  - ✓ If tax shortfall or claim of inadmissible refund is due to some collusion or deliberate act.
  - ✓ If tax shortfall or claim of inadmissible is by reason of any inadvertence, error or misconstruction.
- It's difficult for tax officer to distinguish the cases of willful & non-willful evasions
- Show cause is mandatory in all above situations, which can be issued within 5 years of relevant date i.e. the time of payment of tax or when the refund was issued.

# Assessment of tax and recovery – S-11 of STA

- Taxpayer must be awarded an opportunity of being heard.
- Order-in-Original must be issued within 120 days, extendable by CIR upto 90 days, excluding the time lapsed due to stay proceedings or ADRC 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 12 June 2004.
- Definition of 'tax fraud' describes the cases which tantamount to deliberate evasion of tax. If conditions are not satisfied, the tax officer cannot impose excessive rates of default surcharge and penalties.

# Assessment under Provincial Sales Tax laws

- Sections 23 and 47 of Sindh Act and Sections 24 and 52 of Punjab Act
- Assistant Commissioner can effect best judgment assessment based on any material or definite information – Minimum tax liability alongwith default surcharge and penalty. MTL is not necessarily the final assessment.
- Under SRB's domain, show cause can be issued within 8 years.
- Order is required to be passed within 120 days extendable for further 60 days excluding the time taken for adjournments.
- Time limit for issue of show cause notice under Section 47 of Sindh Act is also 8 years.
- Section 47 also covers recovery of withholding SST.

# Key considerations

- Audit observation needs to be responded quite seriously to avoid process of adjudication. On the other hand, it helps to reduce the demand prior to issuance of show cause notice.
- It is not obligatory upon tax officers to issue audit observation prior to issue of show cause notice.
- Show cause notice be examined first on technical grounds like time limitation, jurisdiction, etc. and then on merits.
- Imposition of default surcharge and penalties should always be challenged if the tax officer has not proved the malafide 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.





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# Recovery

# Recovery – Section 48 of STA

- Recovery of sales tax due can be made by the Inland Revenue Officer:

Sr.No.	Type of recovery measure	Applicable for
(a)	To deduct the tax due from any money owing to person from whom any such amount is recoverable, which is in control of FBR's officers.	Person who is subject to recovery of sales tax due (say person-in-default)
(b)	Require any person to pay to FBR, who holds or may subsequently hold any money for or on account of the person from whom tax may be recoverable	Person who is dealing with the person-in-default
(c)	Stop removal of any goods from the business premises of such person till recovery	Person-in-default
(d)	Require any person to stop clearance of imported goods or manufactured goods or attach bank accounts	Person-in-default
(e)	Seal the business premises till such time the tax is recovered	Not specified, but apparently it should be for person in default
(f)	Detach and sell any moveable / immoveable property of the registered person from whom tax is due	Registered person who is in default
(g)	Attachment and sale of any moveable or immoveable property of the guarantor or any other person who fails to make payment under any guarantee, bond or instrument.	Person who is guarantor or indemnifier with the person-in-default

# Recovery under Chapter XI of Sales Tax Rules

- When the recovery proceedings can be initiated? Rule 71(1) of Sales Tax Rules, 2006 provides the time limit of 30 days from the date of demand adjudged.
- Powers of tax officer are similar as under the Code of Civil Procedure 1908
- Procedures for attachment and sale of properties laid down under the Rules.



# Recovery – Section 66 of Sindh Act

## ▪ Recovery of sales tax due can be made by the SRB Officer:

Sr.No.	Type of recovery measure	Applicable for
(a)	To deduct the tax due from any money owing to person from whom any such amount is recoverable, which is in control of SRB's officers.	Person who is subject to recovery of SST due (say person-in-default)
(b)	Require any person to pay to SRB, who holds or may subsequently hold any money for or on account of the person from whom tax may be recoverable	Person who is dealing with the person-in-default
(c)	Require any bank in written notice to attach bank accounts and remit the amount to the Board	Person-in-default
(d)	Place embargo or seal the business premises till such time the tax is recovered	Not specified, but apparently it should be for person in default
(e)	Detach and sell any moveable / immoveable property of the person from whom tax is due	Person-in-default
(f)	Attachment and sale of any moveable or immoveable property of the guarantor or any other person who fails to make payment under any guarantee, bond or instrument.	Person who is guarantor or indemnifier with the person-in-default



# THANK YOU