



# **Audit, Assessment, Recovery, Revision of Returns, Black-listing, Suspensions & Restorations under Sales Tax Laws**

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**06 February 2018**



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# Audit of Sales Tax Records – Types of Audits

- 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
- Audit by Special Audit Panel under Section 32A of STA
- Audit / Investigation by Directorate General of Intelligence and Investigation-IR [refer SRO.116(I)/2015, dated 9 February 2015].

# Tax Audit – Section 25 of Sales Tax Act, 1990

- 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 (only once during a financial year except when exceptional circumstances to re-audit prevail).
- 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
- Waiver of penalty on voluntary discharge of tax liability during the course of audit and adjudication (100%, 75%, no-waiver)
- Section 28 in Sindh ST Act is pari-materia to S-25 of STA, however waiver of penalties in voluntary compliances at slightly different rates (100%, 80% & 50%)

# What triggers the Sales Tax Audit

## ***Basis of Departmental Audit [under 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

# Conduct of Sales Tax Audit – STGO No.3/2004

- Audit Report be the Addl. Commissioner within 14 days
- Audit report be forwarded to registered person within 4 weeks, this may be in the form of contravention report or audit observations notice
- Audit completion certificate is required to be issued, which is generally avoided by the authorities, yet prescribed under STGO

# Audit by Special Audit Panels – Section 32A

- Board can appoint SAP comprising two or more members of IR officers, CA/CMA firms, any designated person by Board (expert in forensic audit)
- SAP to be headed by a chairman who shall be an officer of IR.
- Absence of any member of SAP may not invalidate the audit proceedings
- Scope laid down under Chapter VI of the Sales Tax Rules, 2006

# Assessment of tax – 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 – 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 penalties on the registered person.

# 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.

# Audit under SRB & PRA's laws

- Section 28 of SST Act Section 33 of PST Act deal with audit of records.
- In case of voluntary discharge of tax liability, no penalty is attracted. Yet, levy of default surcharge applies at 100%.
- In case of discharge of liability before issuance of notice, penalty @ 25% (SST) and @ 20% (PST) shall be payable,
- In case of discharge of liability after issue of notice, 50% penalty is attracted in both statutes.
- Filing of revised sales tax return is compulsory to discharge the liability under audit.

# 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.

# Recovery of Federal Sales Tax

- Section 48 of ST Act read with Chapter XI of Sales Tax Rules, 2006
- No recovery within 30 days of the issuance of the demand order i.e. Order-in-Original or Assessment Order as per Rule 71 of Sales Tax Rules, 2006. The term 'adjudged' creates an interpretation issue whether the date of service of order or date of the Order is to be taken.
- Recovery can be made from the customers, vendors or any other related person of the taxpayer.
- Series of actions prescribed viz-a-viz deduction from receivables, tax/duty refunds, associates, imposing embargos on imports, detachment of bank accounts, properties, seizure of manufacturing operations, etc.
- No recovery if taxpayers deposits 25% of amount of tax due in advance and has filed the appeal before Commissioner (Appeals). Whether 'tax due' includes default surcharge and penalty? What will happen after the adverse decision by CIR-Appeals?

# Recovery Provincial Sales Tax

- Section 66 of SSTA is *pari-materia* to Section 48 of STA, 1990.
- Amendment of advance tax payment of 25% simultaneously enacted vide Sindh Finance Act, 2017 and Punjab Finance Act, 2017.
- Section 64 of SSTA is a unique provision, not existent in other sales tax statutes, which provides that the person who has filed the appeal either with CIR-A or Tribunal shall deposit the amount of tax, as assessed, determined, adjudged or imposed in the decision or the order appealed against. This provision is subject to outcome of the proceedings of Misc. Application for grant of stay under Section 58(4) and Section 62(4) of SSTA. Provision seems contradictory with Section 66 to the extent of the amendment of advance payment of tax due.
- How to manage recovery actions?

# Revision of FBR's Sales Tax Return

- Section 26(3) deals with the filing of revised sales tax return.
- This can be done only with prior approval of the Commissioner within 120 days of the filing of original sales tax return. The scope of revised return covers correction of any omission or wrong declaration.
- Waiver of penalty upon payment with revised sales tax return is at same rates as prescribed under Section 25 of STA.
- What happens when the revised return gives rise to a refund situation?
- Whether filing of revised return to facilitate the customer to claim a legitimate input tax claimant is a workable option? Theoretically 'Yes', but practically 'No'.

# Revision of Provincial Sales Tax Return

- Section 30(6) of SSTA and Section 35(6) of PSTA, revised return can be filed within 120 days of the date of filing of original return.
- Deposit of tax is compulsory with revised sales tax return.
- Prior approval is required from PRA, but not from SRB authorities only when there is payment. Otherwise Rule 17(2) of SST Rules requires for permission.
- Filing fee of Rs.5000 per return is prescribed under SRB's notification SRB-3-4/5/2013, dated 17 June 2013 when there is no payment of SST under revised sales tax return.



# Blacklisting & Suspension under STA, 1990

- In case of issue of fake invoices or tax fraud, CIR can blacklist the RP or suspend the registration in accordance with prescribed procedure. Basis for fake invoices and tax frauds prescribed i.e. non-availability of RP, refusal to allow access to business premises / records, abnormal tax profile, substantial purchases from Blacklisted/Suspended persons, non-filing of returns, etc.
- No input tax on invoices during the period of suspension
- Once blacklisted, the input tax or refund on invoices issued shall be rejected after adjudication. Interpretation is settled by the appellate authorities that input tax claims prior to the date of suspension / blacklisting are legitimate.
- Refunds can be blocked and investigative audit may be directed
- Rule 12 of Sales Tax Rules, 2006 provides detailed procedure on blacklisting and suspension.
- Non-Active Taxpayer cannot file GDs, issue tax invoices, claim input tax or avail any concession. Other persons directed to avoid purchases from Non-Active Taxpayers.

# Restoration of suspension & blacklisting

- In case of issue of order of suspension, CIR issues a show cause notice within 7 days and to provide opportunity of hearing within 15 days of such show cause notice. If notice is not issued within 7 days of the order of suspension, the order of suspension shall become void ab-initio, as such registration stand restored.
- If CIR is satisfied with the reply of RP, then the Order of Suspension stands revoked.
- If the Order of Blacklisting is not issued within 90 days of the hearing notice say SCN, the suspension order stands void ab-initio.
- Restoration of non-active taxpayer is done if the RP files the returns with payment of tax due.



# Thank You