

COMMENTS ON SINDH FINANCE BILL – 2014

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Comments on Sindh Finance Bill 2014

(Proposed to be effective from 1st July 2014)

Sindh Sales Tax on Services Act, 2011:

- 1- Rate of tax has been proposed to be reduced from 16% to 15%
- 2- Following services have been subjected to sales tax at normal rate i-e 15% by inserting respective tariff heading and description in Part-B of the Second Schedule to Sindh Sales Tax on Service Act, 2011 (the Act hereinafter):

Tariff Heading	Description
9805.5100	Tour operators
9805.6000	Recruiting agents
9805.9000	Share transfer agents
9806.1000	Purchase or sale or hire of immovable property
9806.2000	Property dealers
9806.3000	Car or automobile dealers
9811.0000	Services provided or rendered by laundries and dry cleaners
9814.9000	Interior decorators
9815.1000	Medical and dental practitioners and consultants
9815.5000	Technical, scientific and engineering consultants
9816.0000	Services provided or rendered by pathological laboratories
9817.0000	Services provided or rendered by medical diagnostic laboratories including clinical and radiological laboratories, X-Rays, ultra-sound, CT scan, MR Imaging, etc
9819.3000	Rent a car and automobile rental service
9819.9000	Cables TV operators
9819.9400	Technical testing and analysis service
9819.9500	Services provided or rendered by a registrar to an issue
9820.3000	Workshops for electric or electronic equipments or appliances, etc., including computer hardware
9820.4000	Car or automobile washing or similar service stations
9822.1000	Fumigation services
9822.2000	Maintenance or cleaning services
9822.3000	Janitorial services
9832.0000	Services provided or rendered by programme producers and

	production houses
9833.0000	Service provided or rendered by corporate law consultants
9834.0000	Services provided or rendered by fashion designers
9835.0000	Services provided or rendered by call centres
9836.0000	Services provided or rendered by persons engaged in inter-city transportation or carriage of goods by road or through pipeline or conduit
9837.0000	Education services
9838.0000	Services provided or rendered by hospitals and clinics

- 3- Accordingly, following new clauses have been inserted in section 2 of the Act defining certain services now taxable consequent to above insertions in Second schedule to the Act.

(20A) "call centre" means an establishment providing or rendering the services of receiving or transmitting requests by telephone, facsimile, live support software, social media and e-mail, whether for the product support or business support of any person or for information inquiries from consumers or for telemarketing, soliciting of donations and subscriptions, debt collection, market research or other similar services;

(20B) "car or auto mobile dealer", by whatever name called, means a person who is engaged in providing or rendering the services in relation to sale, purchase, transfer, leasing, marketing or booking of cars and automobiles, whether imported or locally assembled or locally manufactured, including new, old and used cars or automobiles;

(20C) "car or automobile washing or similar service station" means a service station or a service centre or an establishment providing or rendering the services in relation to maintenance of cars or automobiles, including the services of inspecting, detailing, washing, cleaning, polishing, waxing, oil coating, lubricating, tuning, changing of oils, filters and plugs, denting, painting, repairing and other similar services;"

(37A) "education services" includes the services in relation to pre-primary, primary, elementary, secondary, higher secondary, General Certificate of Education, General Certificate of Secondary Education, International General Certificate of Secondary Education, college or university education (but not including special education for handicapped children and education under adult literacy programme) and vocational, professional, instructional, technical and continuing education services and trainings rendered or provided by institutions like schools, colleges, universities, academia, institutes, teaching hospitals and degree diploma or certificate awarding institutions and also includes the services provided or rendered by tuition, coaching, practical and raining centers;"

(39A) "**exchange**" has the same meaning as to clause (da) of sub-section (I) of section 2 of the Securities and Exchange Ordinance 1969 (Ordinance No. XVII of 1969)";

(42A) "**fashion designer**" means a person providing or rendering the services of fashion designing including the economic activities relating to conceptualizing, outlining and creating designs and preparing designs and patterns for costumes, apparels, garments, clothing, accessories, jewellery, foot wears or any other services incidental or ancillary to such fashion designing;"

(47A) "**fumigation services**" means the services provided or rendered by a person in relation to pest control and insect control and includes the services of disinfecting and sterilizing of premises, buildings, factories and complexes, including commercial complexes, shopping complexes, office complexes, apartment or residential complexes, multiplexes, exhibition centres, residential units, commercial units, offices and commercial goods but does not include the public health fumigation services provided or rendered by the Federal Government, Provincial Government, Local Government or Cantonment Board and the services in relation to agriculture, horticulure, animal husbandry and dairy farming;

(47B) "**fund and asset management services**" includes the services provided or rendered in relation to asset management portfolio management and all kinds off and management;"

(50A) "**hospitals and clinics**" means the hospitals or institutions as defined in clause (a) of section 2 of the Medical and Dental Council Ordinance. 1962 (Ordinance XXXII of 1962) and includes a person or an establishment, institution, organization or a facility engaged in providing or rendering the services like medical, surgical, psychiatric obstetric, dental or ophthalmological treatment and care, whether preventive, prophylactic or curative of persons including patients or sick and injured persons;"

(54A) "**interior decorator**" means a person providing or rendering, directly or indirectly, any advice, consultancy, technical assistance or, in any other manner, the services related to planning, design or beautification, embellishment, or nation, decoration or furnishing any interior or exterior space, whether man- made or otherwise, and includes a landscape designer;"

(55A) "**labour and manpower supply services**" includes the services provided or rendered by a person to another person, for a consideration, for use of the services of a person or an individual, employed, hired or supplied by him;

(55B) **"laundries and dry cleaners"** means a person providing or rendering, to any person, the services of washing, pressing, stain removing, darning or dry cleaning of any kind of textile or fur or leather materials like apparels, clothes, garments, floor coverings, curtains, draperies, linens, bed-wears, and their accessories;"

(56A) **"maintenance or cleaning services"** means the services provided or rendered in relation to repair, maintenance and cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing, of -

- (i) office equipment, office building commercial or industrial building and premises thereof;
- (ii) commercial complexes including multiplexes. Shopping complexes, office complexes, exhibition centres, apartment or residential complexes; and
- (iii) factories and the plants or machinery or equipment of such factories and, elevators, escalators, tanks or reservoirs of such factories or of office or commercial or industrial buildings or commercial complexes, but does not include such services in relation to agriculture, horticulture, animal husbandry, and dairy farming;"

(59A) **"medical and dental practitioners and consultants"** means the registered medical practitioners and the registered dental practitioners as defined in clauses (q) and (r) of section 2 of the Medical and Dental Council Ordinance 1962 (Ordinance No. XXX.II of 1962);"

(67A) **"production house"** means a person or an establishment producing a programme or providing or rendering various services facilities, utilities or advantages in relation to production of programmes;

(67B) **"programme"** means any audio or visual matter, live or recorded intended to be disseminated by transmission of electro-magnetic waves through space or through cables to be received by general public either directly or indirectly through the medium of cables, telecommunication or relay stations;

(67C) **"programme producer"** means a person who produces a programme on behalf of, or for use by, another person;

(67D) **"property dealer"**, by whatever name called, means a person who is engaged in providing or rendering the services, directly or indirectly and in any manner, in relation to sale, purchase, leasing, renting, supervision, maintenance, marketing, acquisition or management of real estate, and includes a real estate agent, a real estate broker, a real estate consultant;"

(69A) **"real estate"** means the land and includes-

- (i) all attachments above and below the land;
- (ii) all things that form a natural part of the land;
- (iii) all things that are developed or installed including buildings and site improvements; and
- (iv) all permanent building attachments such as plumbing, heating and cooling systems, electrical wiring and built-in items such as elevators and allied equipment, and all rights and interests therein, whether the interest is freehold or leasehold, and whether the purpose or use thereof is residential, commercial or industrial;

(69B) **"recruiting agent"**, by whatever name called includes recruiting consultants or consultancy and means a person engaged in providing or rendering any service, directly or indirectly, to any person in any manner, for the recruitment of manpower, temporarily or otherwise.

Explanation.- For the purpose of this clause "recruitment" includes inviting of applications for recruitment. receipt of applications from candidates, pre- interview or pre-recruitment screening of applications and applicants, short listing of applicants, interview of candidates, verification of credentials and antecedents of the candidates, verification of authenticity of the documents submitted by the candidates;

(69C) **"registrar to an issue"** means a person providing or rendering the services in relation to issue of securities, including collection of application forms from investors, keeping a record of applications and money received from investors or paid to seller of securities, assisting in determining the basis of allotment of securities, finalizing the list of persons entitled to allotment of securities and processing and dispatching of allotment letters, refund orders or certificates and other related documents;"

(72A) **"rent-a-car and automobile rental service"** means the services provided or rendered by a person engaged, whether directly or indirectly, in the economic activity of renting cars, cabs, vans or any other passenger motor vehicle;"

(77A) **"securities"** has the meaning as assigned to it in clauses (d) and (l) of sub-section (l) of section 2 of the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969);

(79A) **“share transfer agent”** means a person who maintains the record of holders of securities, and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto;”

(96A) **“technical, scientific and engineering consultants”** means a person providing or rendering the technical, scientific and engineering service, advice, Consultancy, assistance or supervision, in any manner, either directly or indirectly, to any person, in one or more disciplines of technology, science and engineering and includes a person known as a consulting engineer or professional engineer for the purpose of the Pakistan Engineering Council Act, 1975 (Act No. V of 1976) or known as a structural engineer for the purpose of the Sindh Building Control Ordinance, 1997 (Sindh Ordinance No. V of 1979);

(96B) **“technical testing and analysis”** means a service provided or rendered in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, and includes listing and analysis undertaken for clinical testing of drugs, pharmaceuticals and formulations, but does not include any testing or analysis service provided in relation to human beings or animals;”;

(98A) **“tour operator”** means a person engaged in providing or rendering the services of planning, scheduling, organizing or arranging tours or package tours (which may include arrangements for accommodation, sightseeing, tourism or other similar services in Pakistan or abroad) by any mode of transport, and includes a person engaged in the business or economic activity of operating tours.

Explanation.-for the purpose of this clause, the expression “tour” does not include a journey organized or arranged for use by an educational institution, other than a commercial, training or coaching centre, for imparting skill or knowledge or lessons on any subject or field;

(98B) **“transportation or carriage of goods”** includes the services provided or rendered by a goods transport agency and means the services of transportation of goods by road or through pipeline or conduit, including the services of cargo handling like loading, unloading, packing, un-packing, stacking and storage of goods by the person providing or rendering the services of transportation and carriage of goods;”;

4- Other Significant amendments include:

Section 2(94)

Definitions:

Definition clause (94) "**TAX FRAUD**", has been amended to include the non-payment of tax collected on supply of service or tax withheld being withholding agent under withholding special procedure, wrong claim of input or refund and non-filing of sales tax return for consecutive four tax periods in scope of "tax fraud".

Section 3 (4), 9(3), 15(1), 45, 72

(Taxable Services, Person Liable to Pay Tax, Adjustments, Exemptions from Penalty and default surcharge, Powers to make rule)

Board now is not required to obtain prior approval of government which was previously necessary to notify;

- a service or class of service provided by a person to be considered as service provided from registered office in Sindh
- that who will be responsible to pay sales tax under the Act on particular service or class of service either service provider or recipient
- certain condition and restriction on claim of admissible input tax against the taxable services being provided by a person.
- a registered person or class of registered to exempt whole or any part of penalty or default surcharge.
- to make rule for carrying out the purposes of the Act.

Section 4(1)

(Economic Activity)

Through amendment one off transaction in nature of economic activity will equally be considered for the purpose of levying tax under the Act as in normal course of business.

Section 17

(Time, Manner and mode of payment)

Sales tax liability under the Act is payable now on "**due date**" prescribed under respective rule, previously amount of tax was required to be paid along with return.

Section 23**(Assessment of Tax)**

While calculating period of one hundred of twenty days time for conclusion of proceeding against show cause notice u/s 23(3) issued time limit of thirty days to be excluded on account stay or adjournment sought by the registered person has now been done away meaning thereby that if adjournment exceeding 30 days is sought by the registered person then the actual time of adjournment will be excluded for the purpose of time limitation.

Section 26(1)**(Records)**

Sales tax record to be maintained under the Act may now also be kept in Sindhi in addition to Urdu or English.

Section 26(5)

Printed copy of audited Financial Statements prepared under Companies Ordinance 1984 or any law is to be submitted with the concerned Assistant Commissioner within 60 days of issuance of auditor's report.

Section 36**(Delegation of Powers)**

Powers of Commissioner (Appeals) can be delegated to Deputy Commissioner SRB through notification in official gazette by the Board.

Section 43**(Offences and penalties)**

Various penalties have been enhanced as under:

SECTION	DESCRIPTION	PROPOSED AMENDMENT
2.	Where a person fails to furnish a return within a due date	Such person shall be liable to a penalty of Rs.10,000/- per month or a fraction thereof provided that if a return is filed within 15 days of the due date a penalty of Rs.300/- for each day of default shall be paid.
3	Where a person fails to deposit the amount of tax due or any part thereof in the time or manner laid down under this Act or the rules made there under.	<p>Such person shall be liable to a penalty of Rs.10, 000/- per month or a fraction thereof or five percent of the total tax payable for that period (if default is more than 3 days whichever is earlier;</p> <p>a) If the amount of tax due is not paid even after the expiry of a period of sixty days of issuance of the notice for such payment by an officer of the SRB, not below the rank of Assistant Commissioner SRB, the person shall, further be liable Upon conviction by a Special Judge, to imprisonment for a a term which may extend to three years, or with fine which may extend to the amount of unpaid tax, or with both.</p> <p>No penalty shall be payable if any miscalculation is made for the first time during a years.</p>

5.	Where a registered person who, without any reasonable cause, in non compliance with the provision of this Act fails to produce record on receipt of notice from the board or any officer of the SRB directing him to produce such record.	Where such person is a company, it shall be liable to pay a penalty of 10,000/- rupees in other case penalty will be 5,000/- rupees. Provided that if record is not produced with 60 days of receipt of notice, he shall be liable to pay the penalty 10,000/- or five percent of the total tax payable for the tax period (3) for which he has failed to maintain the required record whichever is higher.
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In case of serial numbers of table of section 43(1) other then mentioned above penalty has been enhanced from 5,000/- to 10,000/- being fixed and from 3% to 5% of total tax payable where ever it is applicable.

Section 57(2), (3)

(Appeals)

Authorized representative of the registered person is required file letter of authorization along with form of appeal.

Appeal fee has been enhanced in case of company from one thousand to two thousand and from two hundred to one thousand in cases other than company.

Appeal against any order is now required to be filed within thirty days of service of order invariably.

Section 59 (6), (7) (8)***(Decision in appeal)***

While calculating period of one hundred of twenty days time for passing appeal order, restriction on time limit of thirty days to be excluded on account stay or adjournment sought by the appellant has now been done away meaning thereby that if adjournment exceeding 30 days is sought by the appellant then the actual time of adjournment will be excluded of the purpose of time limitation.

Previously, if the appeal remained undecided for four month from the end of month in which it was lodged, the relief sought by the appellant was deemed to have been given, now the provision have been substituted introducing a new concept that the such undecided appeals would be transferred to appellate tribunal with intimation to appellant, the substituted provision read as under:

Section 60***(Appointment of the Appellate Tribunal)***

Eligibility criteria for judicial member of appellate tribunal have been revised as:

Who is or has been a Judge of the Sindh High Court or is or has been Judge of District & Session Court with at least two years of service as a District & Session Judge.

Section 61***(Appeal to the Appellate Tribunal)***

The revisional order passed by the Commissioner SRB u/s 55 or by the Board u/s 56 is now appealable directly before the Appellate Tribunal. Previously no remedy was provided under the statute in this respect.