

COMMENTS ON SINDH FINANCE BILL – 2015

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CHARTERED ACCOUNTANTS

Dated: June 13, 2015

Comments on Amended Sindh Finance Act 2015

(Effective from 1st July 2015)

1. Standard rate of tax has been proposed to be reduced from **15% to 14%** for services other than telecommunication services.
2. Rate of tax for the Telecommunication services have been announced to be reduced from **19.5% to 18%** by issuing notification u/s.8(2) of the Act.
3. Services presently being taxed at reduced rate of **05%** have been announced to be taxed at **6%** by issuing notification under Act.
4. Following new services have been proposed to be brought into the tax net in standard rate i.e. @ **14%** by inserting relevant tariff heading and description in First as well as Second Schedule to the Act.
 - Services provided or rendered by laboratories other than the services relating to pathological, radiological or diagnostic test of patients.
 - Credit rating agency
 - Indenters
 - Commission agents
 - Airport Services.
 - Exhibition services.
 - Motel and Guest houses
 - Car or Automobile dealers.
 - Packers and Movers.
 - Ready-mix concrete services.
 - Erection, Commissioning and installation services.
 - Technical inspection and certification services including quality control services including ISO certificate services.
 - Valuation services including competency and eligibility testing services.
5. Following new services have been proposed to be brought into the tax net at standard rate by inserting relevant tariff heading and description in First as well as Second Schedule to the Act. However, it has been announced that a notification u/s.8(2) of the Act effective from **01.07.2015** shall be issued for application of reduced rate of **10%** on these services;
 - Travel agents
 - Auctioneers.
 - Dredging or desilting services.
 - Intellectual property services.

6. Following new services have been proposed to be brought into the tax net at standard rate by inserting relevant tariff heading and description in First as well as Second Schedule to the Act. However, it has been announced that a notification u/s.8(2) of the Act effective from **01.07.2015** shall be issued for application of reduced rate of **06%** on these services;
- Renting of immovable property services relating to every type of land or building excluding vacant land, agriculture land and residential buildings and educational institutes.
 - Ready-mix concrete services.(optional with choice to be tax @ 14% with input tax facility and 06% without input tax facility).
7. Entries of Second Schedule relating to stock brokers, have been proposed to be re-phrased to broaden the scope of said entries as under;
- **Stock brokers, futures brokers and commodity brokers.**
 - **Underwriters.**
8. Definition of "Service" has been proposed to be amended in a way that service involved in supply of goods is to be treated as services unless otherwise specified by the Board the amended definition read as under;

"Service or services means anything which is not goods and shall include but not limited to the services listed in the first schedule of this Act;

Explanation I *A service shall remain and continued to be treated as service regardless whether or not providing thereof involved any used, supply, disposition or consumption of any goods either as an essential or as an incidental aspect of such providing of service.*

Explanation II *Unless otherwise specified by the Board the service or services involved in the supply of goods shall remain and continued to be treated as service or services."*

9. To elaborate the services proposed to be brought in tax net following new definition clauses have been proposed to be inserted:

(13 A) "Auctioneer" means a person providing or rendering services in relation to auction of property, moveable or immovable and tangible or intangible in any manner.

Explanation:- *"Auction of property" includes calling the auction or providing facility, advertising or illustrative services price estimates, short term storage services and repair and restoration services in relation to auction of property.*

(18A) “business bank account” means a bank account of a person for business transaction, subject to the condition that such account is declared by him in the prescribed application for registration submitted for obtaining a registration number or for changing the particulars thereof.

“(22A) “commission agent” means a person who acts on behalf of another person for causing sale or purchase of goods or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person, -

- (i) deals with goods or services or documents of title to such goods or services; or
- (ii) collects payment of sale price of such goods or services; or
- (iii) guarantees for collection or payment for such goods or services; or
- (iv) undertakes any activity relating to such sale or purchase of such goods or provision or receipt of such services;

“(30A) “credit rating agency” includes a person engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and also includes a person engaged in the business of credit rating or evaluation of credit worthiness or credit risk of any financial obligation, instrument or security and further includes a credit rating agency as specified in section 63 of the Securities Act, 2015 (Act No. III of 2015);

“(35A) “dredging or desilting” includes removal of material including silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, lake, canal, pond, reservoir, port, harbour, channel, backwater or estuary;

“(38A) “erection, commissioning and installation services” means the services provided or rendered in relation to -

- (i) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or
- (ii) Installation -
 - (a) of electrical and electronic devices, including wirings or fittings thereof;
 - (b) of plumbing, drain laying or other installations for transport of fluids;
 - (c) of heating, ventilation or air-conditioning including related pipe work, wood work, duct work and sheet metal work;

- (d) of thermal insulation, sound insulation, fire proofing or water proofing;
- (e) of lift and escalator, travelators or fire escape staircases; or
- (f) requiring such other similar services;

“(39A) “exchange” means stock exchange, securities exchange, futures exchange or commodity exchange;

(42A) “ancillary means” marketing, packing, delivery and other similar services.

“(47C) “futures broker” means a person as defined in clause (xxiv) of section 2 of the Securities Act, 2015 (Act No. III of 2015);

“(51A) “indenter” means a person who is a representative for a non-resident person or a non-resident company or a foreign product or service and who gets a consideration in the shape of commission, fee, remuneration or royalty on a transaction, irrespective of whether the transaction has taken place out of his effort, consent or otherwise;”;

“(54A) “intellectual property right” means and includes any right of intangible property, anything produced by the mind, trade mark, patent, design including industrial design, layout design (topographies) of integrated circuits, copyright or any other similar intangible property as defined in clause (g) of section 2 of the Intellectual Property Organization of Pakistan Act, 2012 (Act No. XXII of 2012) and covered by the Intellectual Property Laws specified in clause (h) of section 2 thereof or under any other law for the time being in force;

(54B) “intellectual property service” means any service provided or rendered to a person by any person by transferring temporarily or permitting the use or enjoyment of an intellectual property right;

(54C) “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;

“(69A) “ready mix concrete” means a concrete mixture containing cement, water and aggregates comprising sand, gravel or crushed stones, etc., mixed, according to a set recipe, in a batching plant or in a transit mixer or both, for delivery, in a ready to use condition, to a work site by me of truck mounted in-transit mixers;

(69B) “ready mix concrete service” means the services provided or rendered in relation to preparation, batching, mixing, transportation or delivery of ready mix concrete;

(69C) “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 and 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 interest therein, whether the interest is freehold or leasehold, and whether the purpose or use thereof is residential, commercial or industrial;

“(72B) “renting of immovable property” includes renting, letting, sub-letting, leasing, sub- leasing, licensing or similar other arrangements of immovable property for use in the course or furtherance of business or commerce, but does not include –

- (i) Renting of immovable property by a religious body to another religious body;
- (ii) renting of vacant land or premises solely used for agriculture, aquaculture, farming, forestry, animal husbandry or mining purposes;
- (iii) renting of land or premises solely used for outdoor games and sports;
- (iv) renting of buildings solely used for residential purposes or solely used as hostels and boarding homes of a recognized educational institution; and
- (v) renting of immovable property by hotels, motels, guest houses, clubs and marriage halls and lawns which are otherwise liable to tax under tariff heading 98.01 and the sub- headings thereof.

Explanation-I. Where renting of immovable property is effected under a single composite contract or agreement involving part of property for use in commerce or business and part of it for residential accommodation purpose, the entire property under the contract or agreement shall be treated, for the purpose of levy of tax under this Act, as property for use in commerce or business and, accordingly, the total value of the contract or agreement shall be treated as taxable value.

Explanation II. For the purpose of this clause –

- (a) the term “for uses in the course or furtherance of business or commerce” includes the use of immovable property as factories, offices including government offices or public offices, warehouses, laboratories, educational institutions, shops, showrooms, retail outlets, multiple-use buildings, etc.;

- (b) the term “renting of immovable property” includes allowing or permitting the use of land or space in an immovable property, irrespective of the transfer of possession or control of the said property;
- (c) the term “immovable property” includes –
 - (i) building and part of a building and the land or space appurtenant thereto;
 - (ii) land or space incidental to the use of such building or part of a building;
 - (iii) common or shared areas and facilities relating to the property rented;
 - (iv) vacant land or space given on lease or license for construction or temporary structure to be used at a later stage for furtherance of business or commerce; and
 - (v) plant, machinery, equipment, furniture, fixture or fitting installed in or provided in or attached to the immovable property; and
- (d) the term “rent” means any payment or consideration, by whatever name called, received or receivable under any lease, sub-lease, tenancy or any other contract or agreement or arrangement for use, occupation or right to use or occupy any immovable property, and includes any forfeited deposit paid under such lease, sub-lease, tenancy or other contract or agreement or arrangement;

(72C) “renting of immoveable property services” means any service provided or rendered to any person, by another person, in relation to renting of immoveable property or any other service in relation to such renting for use in the course or furtherance of business and commerce;”;

“(77A) “securities” include –

- (a) shares and stock of a company (shares);
- (b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including, in particular, debentures, stock, loan stock, bonds, notes, commercial paper, sukuk or any other debt securities of a company, whether constituting a charge on the assets of the company or not (debt securities);
- (c) Loan stock, bonds, sukuk and other instruments creating or acknowledging indebtedness by or on behalf of the federal or provincial governments, central bank or public authority (government and public debt securities);
- (d) Modaraba certificates, participation term certificates and term finance certificates;
- (e) Any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities (warrants);

- (f) Any option to acquire or dispose of any other security (options);
- (g) Units in a collective investment scheme, including units in or securities of a trust fund (whether open ended or closed end);
- (h) The rights under any depository receipt in respect of shares, debt securities and warrants (custodian receipts);
- (i) Futures or forward contracts;
- (j) Certificates of deposit; or
- (k) Any other instrument notified by the Securities and Exchange Commission of Pakistan to be securities for the purposes of the Securities Act, 2015 (Act No. III of 2015);

“(90) “stockbroker”, by whatever name called, means any person engaged in the business of effecting transactions in securities for the account of others, and includes a person carrying on any of the activities of securities broker, securities advisor and securities manager as defined in section 2 of the Securities Act, 2015 (Act No. III of 2015);

“(93A) “tax fraction” means the amount worked out in accordance with the following formula:-

$$\frac{a}{100 + a}$$

('a' is the rate of tax applicable to the services in terms of section 8);

“(96AA) “Technical inspection and certification services, including quality control certification services and ISO certifications” means examination or inspection, including pre-shipment inspection, of goods or services or processes or materials or information technology software or any immovable property to certify that such goods or services or processes or materials or immovable property qualifies or maintains the specified standard, including functionality or utility or quality or safety or any other characteristic or parameter, and also includes the services provided or rendered for the purposes of the quality control evaluation or certification and further includes the process and assistance in ISO certifications and such other certifications;”;

“(98C) “travel agent” means a person engaged in providing or rendering any service connected with booking of passage for travel;

(98D) “underwriter” means a person as defined in clause (lxvi) of section 2 of the Securities Act, 2015 (Act No. III of 2015), and includes a sub-underwriter;

Section 43 of the Act has been proposed to be amended to rationalize the penalties for the various offences significant of which have been summarized as under;

- a. Person who failed to apply for registration in time will now be liable to pay a penalty of Rs.10,000/- or 5% of amount of sales tax he would have been liable to pay had he been registered, in case of non-compliance of compulsory registration, notice or an order a minimum penalty shall be Rs.100,000/-, in case continue default for 90 days the person may be imprisoned for one year upon conviction of special judge.
- b. A person failing in intimating change in particulars of his business including address, bank accounts, economic activity, etc, in 15 days of such change shall be liable to penalty which may extend to Rs.100,000/- subject to minimum penalty at Rs.10,000/-.
- c. Person who failed to furnish return within due date shall be liable to penalty of Rs.10,000/- per month or fraction thereof provided that if return is filed within 10 days of the due date a penalty of Rs.300/- for each day of default shall be paid.
- d. It has been proposed to enhance penalty of Rs.10,000/- to Rs.100,000/- where person fails to maintain record under the Act, further the person shall be liable upon conviction by Special Judge to represent which may extend to one year or fine at Rs.100,000/- or both.
- e. The person who fails to produce records on receipt of notice without reasonable cause shall be liable to pay a penalty which may extend to Rs.100,000/- subject to minimum penalty at Rs.10,000/-.
- f. It has been proposed to enhance the penalty from Rs.25,000/- to Rs.50,000/- where person is charged with offence of tax fraud as defined in section-2(49) under the Act.
- g. Any person denying or obstructing the access of authorized officer to the business premises shall be liable to pay a penalty at Rs.50,000/-.
- h. Any person denying or obstructing the access of posted officer to monitor the provisions of services of such person or fails to facilitate the officer shall be liable to pay a penalty at Rs.100,000/- or twice the amount of minimum tax as may be assessed or determine under section 23 whichever is higher.

- i. Any person who violates any embargo place on the economic activity of that person or tempers with the seal placed on the business premises in connection with recovery of tax shall be liable a penalty at Rs.100,000/- or amount equal to the amount of tax sought to be recovered.
- j. Where a bank fails to attach or delays in attaching the bank account, the bank shall be liable to penalty of Rs.100,000/- or an amount double of the amount of tax sought to be recovered whichever is higher. Further the Manager or Officer incharge of such bank shall be liable upon conviction by special judge to imprisonment which may extent one year or fine an amount equal to sought to be recovered or both.
- k. Where a person refuses to receive any notice or order issued by any officers of SRB or obstruct any officer in the performance of special duties shall be liable to pay penalty at Rs.50,000/- or 100% of tax payable for the tax period to which the offence relates.
- l. The person failing in deduction of tax as per Withholding Rule shall be liable to a penalty at Rs.50,000/- or equal to the amount of tax whichever is higher.
10. Other significant amendment has been proposed to be made as under;
- **In section-3 “Taxable services”**, sub-section (2) is proposed to be amended to tax indiscriminately the services provided by non-resident to resident. Earlier concept of commencement and termination of the activity has been done away.
 - **In section -23 “Assessment of tax”** new sub-section (1A) has been proposed to be inserted whereby concept of best judgment assessment is being introduced.

(1A) Notwithstanding anything contained in this Act and subject to such conditions and guidelines as may be prescribed by the Board in this regard, where a person fails to file the return for a tax period by the due date or where the registered person fails to furnish any information, explanation, documents, record or any other details as may be required in a notice issued under sections 23, 28, 29 or 52, an officer of the SRB, not below the rank of an Assistant Commissioner, shall, based on any available information or material, make an assessment order, to the best of his judgment, determining the minimum tax liability of such registered person for the tax period specified in the notice. The minimum tax liability shall be in addition to the penalty and default surcharge prescribed in sections 43 and 44.

***Explanation:** Determination of minimum tax liability for a tax period shall not be the final tax liability and the registered person shall be liable to discharge his actual liability, as it may accrue or may be determined as a result of audit or special audit or forensic audit under this Act.”;*

- The power of Commissioner of SRB to further amend the assessment order has been proposed to be **withdrawn by omitting** sub-section (6) of section -23.
- **Section -25 “Suspension of Registration”** is proposed to be amended to extend the power of suspension of registration of a person to officer of SRB authorized by the Board in this behalf. Earlier such powers vest with the Board only.
- **Section-29 “Special audit by the Chartered Accountant”** is proposed to be amended to replaced the concept of special audit by the Chartered Accountant & Cost Accountant with audit by **Special Audit Panels** to be appointed by the Board comprising of mix team of two or more members from officers of The SRB, Chartered Accountants and Cost and Management Accountants headed by officers of SRB. Detailed procedures and working mechanism of special audit panel may be prescribed by the Board.
- **In section-37 “Special Judges”**, the condition that person to be appointed as Special Judge should have served in BS-21 or above for at least a period of seven years and qualified for appointment as Judge of High Court is proposed to be done away by omitting sub-section (2) meaning thereby that now any judge who have served for five years as District & Session Judge can be appointed as special judge.
- **In section-38 “Cognizance of offences by Special Judges”** the power to report an offence of a person by the SRB officer to Special Judge to take cognizance have been proposed to be extended to the level of Assistant Commissioner from existing Deputy Commissioner level.
- **Section-46 “Compounding of Offences”**, the Board is proposed to be empowered to compound with the offences warranting prosecution under the Act. Presently such power vest with the Government.
- **Section-49 “Power to arrest and prosecute”** is proposed to be amended in such a way that Board may authorize Assistant Commissioner-SRB or any person who on the basis of material evidence has reasonable cause to believe that any person who committed tax fraud or any offence warranting prosecution the Act may cause arrest of such person. Presently such powers cannot be delegated to officers below the rank of Commissioner-SRB.

- **Section-52 “Obligation to produce the documents and provide information”** is proposed to be amended to extend the powers to call for such information also which is not required to be maintained under the Act and is in possession of registered person for the reason of requirement of some other law or otherwise.
- **Section-54 “Posting of the Officers of SRB in the Office premises”** is proposed to be amended by inserting a new sub-section whereby the registered person whose provision of services being monitored shall be obliged to facilitate at his premises the SRB officer with the departmental requirements prescribed by the Board or Commissioner SRB at his own cost.
- **Section 57 “Appeals”** is proposed to be amended to include the order of cancellation of registration or institution of proceedings upon expiry of sixty days of the suspension of registration under sub-section (5) of section 25 be appealable order.
- **Section 60 “Appointment of the Appellant Tribunal”** is proposed to be amended whereby besides some corrective changes the age limit for the appointment of as member of appellant Tribunal is enhanced from 65 years to 70 years.
- **Section 63 “Reference to the High Court”** the power to file reference against order of the appellant tribunal has been proposed to be extended to include Assistant Commissioner authorized by the Commissioner SRB also, presently such power cannot be exercised by the officers except not below the rank of Deputy Commissioners authorized by Commissioner SRB.
- **Section 64 “Deposit of sales tax demand while appeal is pending”** is proposed to be re-phrased whereby now sales tax demand created vide any order passed under the act is required to be deposited within thirty days of passing of order despite pendency of appeal against order except where stay is duly granted by the Commissioner Appeal or Appellate Tribunal. Presently said section requires deposit of sales tax only to the extent of admitted amount of sales tax or amount determined by the Commissioner Appeal or Appellate Tribunal.
- **Section 66 “Recovery of arrears of tax”** clause (c) and (d) of sub-section (1) are substituted with more elaborative ones whereby power to attach bank accounts and cease business activity have been provided.
- **Section 77 “Issuance of duplicate Sales Tax document”** is proposed to be amended to revise the fee for obtaining attested duplicate copy of a document as Rs.500/- per document or Rs.200/- per page of such document whichever is higher. Presently said fee is Rs.500/- document.