



Service Tax Memorandum 2021

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PREFACE

This Service Tax Memorandum summarizes crucial changes proposed in the Punjab and Khyber Pakhtunkhwa [KPK] Finance Bill 2021 vis.a.vis Service Sales Tax Laws.

All changes through the these bills are effective from 01 July 2021.

The tax memorandum contains the comments, which represent our interpretation of the legislation. We, therefore, recommend that while considering their application to any particular case, reference be made to the specific wordings of the relevant statute(s).

The memorandum can also be accessed on our website www.mooreShekhamufti.com

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AMENDMENTS IN PUNJAB SALES TAX ON SERVICES ACT, 2012

Active Taxpayer

Section 2(1)

The term “active taxpayer” is not defined under Punjab Sales Tax on Services Act, 2012 [PST Act]. The Bill proposed to define ‘active taxpayer’ under clause 1 of Section 2 of the PST Act as:

- The persons who had files tax returns of at least one of the preceding three consecutive tax periods;
- Whose registration has not been suspended or blacklisted by the Authority.

We understand that this insertion has been proposed to provide legal strength to already implemented modus operandi in relation to active taxpayers’ list maintained with Punjab Revenue Authority [PRA] in terms of Rule 16 of the Punjab Sales Tax on Services (Withholding) Rules, 2015.

Company

Section 2(11)

This amendment is rectificatory in nature as it is only to substitute the term “Companies Ordinance 1984 (XLVII of 1984)” with the term “Companies Act, 2017 (XIX of 2017)” considering that the Companies Ordinance 1984 had already repealed after enactment of Companies Act, 2017.

Standard Rate

Section 2(41)

The bill seek to define the term “standard rate” as “16%” vide insertion of clause 2(41A) in the PST Act. We feel that this insertion has been proposed in line with the insertion of Section 10A, which provides an option to taxpayers to pay sales tax at standard rate.

Option to charge tax at standard rate

Section 10A

Prior to insertion of Section 10A, the PST Act or allied rules did not provide any mechanism through which service providers could opt to pay sales tax at standard rate and avail the corresponding input tax adjustment. Vide this insertion, the bill proposes to provide such an option to service providers who are rendering services in the territory of Punjab to charge, levy, collect and pay sales tax at standard rate on those services which are subject to tax at reduced rate under Second Schedule of the PST Act, subject to prior permission from PRA.

The bill also proposes that such an option exercised by service providers shall be irrevocable and can be revoked by PRA only. It is also proposed that PRA may also withdraw the permission, if has the reasons to believe that taxpayer has misused this option.

We understand an identical option is already available under KPL Sales Tax Laws since enactment of Finance Act, 2020. Moreover, such an option is also available under Sindh Sales Tax on Services Act, 2011 on certain services with certain conditions and restrictions.

Apart from harmonizing the tax provisions with those of other provincial authorities, we understand that this amendment has been made to address the grievances of taxpayers involved in providing reduced rated services, who now have an option to pay sales tax at standard rate and avail the corresponding input tax adjustment accordingly.

Offence and Penalties

Section 48

The Bill seeks to substitute Section 59B with 59A in relation to penalty listed at Serial No. 20 of Section 48 of PST Act. This amendment seems to be rectificatory in nature as said penalty deals with the offence regarding non-compliance of electronic invoicing system which are specifically covered under Section 59B of the PST Act.

Besides above, it is proposed to insert following new penalty at Serial No. 21 in a case if a registered person charges sales tax in excess of the rate provided in the Second Schedule:

S. No.	Offence	Penalty	Section
21	Where a registered person charges sales tax in excess of the rate provided in the Second Schedule	Such person shall be liable to pay a penalty of rupees ten thousand per invoice or ten percent of the invoice amount, whichever is higher	10

Posting an officer to business premises

Section 59

Presently, PST Act empowers the PRA to post an officer to the premises of a registered person to monitor the provision of services by such registered persons. Vide this amendment, it is proposed to empower officer to monitor the receipt of services by such registered person. We understand that this amendment seeks to monitor the taxability of services under reverse charge mechanism and to tap the unregistered person who are providing taxable services to the registered person in the territory of Punjab.

Decision in appeal

Section 65

The Commissioner (Appeals) PRA is required to pass an order within one hundred and twenty days from the date of filing of appeal or within the extended period of sixty days. In case, the order is not being passed within the prescribed time limit or within extended time limit,

the Commissioner (Appeals) was required to transfer this appeal to the Appellate Tribunal along with comprehensive report and reasons for not deciding the appeal within prescribed or extended time period as prescribed under sub-section 7 and sub-section 8 of the PST Act.

Vide Punjab Finance Bill 2021, it is proposed to omit the provisions wherein Commissioner Appeals is required to transfer the appeal to Appellate Tribunal in case if appeal is not decided within prescribed time.

We understand this provision was initially introduced to bind the Commissioner (Appeals) to dispose the appeal within a reasonable time, otherwise transfer the case to Appellate Tribunal to expedite the process of disposal of appeal. In the past, it was observed that Commissioner (Appeals) were not complying with this provision; consequently work burden on Appellate Tribunal was increasing. These factors appear to be the reason of omission of said sub-sections from section 65 of the PST Act.

Second Schedule

Taxable at reduced rate of 5%

The Bill seeks to reduce the sales tax up to five percent on following services (without input tax adjustment).

- Insurance agent and insurance brokers¹.
- Services by restaurants upon payment through mobile wallet or QR scanning.
- Brokerage and indenters in respect of home chefs.
- Beauty parlors, salons, clinics, sliming clinics, spas and similar other establishments.
- Fashion designers
- Architects, town planners, landscapers, designers, interior decorators and designers.
- Laundries and dry cleaners.
- Services in relation to supply of tangible goods.
- Warehousing and storage services.
- Dress designing and stitching services.
- Rental of bulldozers, excavators, cranes

Reduction in tax rate

Call Center Services (Serial No.41)

The bill seeks to reduce the tax rates in case of services provided by call center in the territory of Punjab from 19.5% to 16%. We understand that the rate of 19.5% is generally provided for

¹ The tariff heading "General Insurance Agents" is already mentioned in First Schedule to PST Act. Therefore, bringing the insurance agent and brokers in to the tax ambit through insertion in Serial No. 07 of Second Schedule, particularly in "column 4" appears to be legally defective.

“Telecommunication Services”, while call center services do not fall under the definition of “telecommunication”. Therefore, it has been proposed to be taxed at standard rate.

Broadening the Tax Net

1. Entertainment Services

Serial No. 70

The Bill seeks to insert Entry No. 70 in Second Schedule the PST Act, wherein it is proposed to tax “Entertainment Services (including cinemas, theatres, concerts, circus, sport events, races, films, fashion shows and mobile stage shows)” at zero percent without input tax adjustment.

We understand that the primary objective of this insertion appears to bring this sector in tax net and to improve their documentation and record keeping in line with provisions of PST Act.

2. Transportation Services

Serial No. 48

The bill proposes to bring the “intra city carriage of goods by rail or road” in the ambit of tax at 15%, which is exempt as of today. Presently, sales tax is only applicable on services of inter-city carriage of goods by rail or road. We feel that it would be very difficult task for PRA to implement this amendment, considering the following issues:

- ✓ It's an un-organized and undocumented sector;
- ✓ Determination of value and quantum of services in this case is difficult to ascertain;
- ✓ Collection of tax and assessment thereof would be too difficult;
- ✓ Intra-city carriage is exempt under other Provincial Laws.

AMENDMENTS IN KHYBER PAKHTUNKHWA SALES TAX ON SERVICES ACT, 2013

Liability of Withholding Agent

Section 2(57) and 30(3)

Presently, the definition of “Withholding Agent” is neither provided under the Khyber Pakhtunkhwa Sales Tax on Services Act, 2013 [KPK Act] nor the liability of “Withholding Agent” is backed by enabling provisions. The bill proposes to add clause 57 in Section 2 of KPK Act, which defines “Withholding Agent” to be any person, who, as a recipients of taxable service or otherwise, withholds or deducts and pays or deposits tax directly to the Government. The bill also proposes to hold “Withholding Agent” liable for payment of tax, default surcharge and penalty, in case if he fails to withhold and deposit the tax in a manner prescribed under the KPK Act and Rules.

We understand that this amendment has been proposed to provide legal backing to withholding provisions and ought to be prospective.

Option to charge Standard Rate of Sales Tax

Section 26A

Vide Finance Act, 2020, the registered persons was provided with an option to opt for standard rate of tax on the provision of services, which are subject to tax at reduced rate. Vide this amendment, it has been proposed that corporate registered person intending to opt for standard rate of tax shall only intimate KPRA at least one month in advance. After exercising the option, the taxpayer shall not be eligible for reduced rates without prior permission from KPRA.

Adjustment

Section 32(3)

The bill proposes to restrict the retrospective application of any notification issued in relation to adjustment / deduction of tax. If no date has been specified in the notification, the effective date of such notification shall be deemed to be the specified date.

Joint and Several Liability

Section 35

The bill proposes to insert an explanation in Section 35 of the KPK Act, whereby the person receiving the taxable services, is now required to take all possible measures to ensure that services provider has deposited due tax, relating to such transaction.

On bare perusal of amendment in Section 2(57), 30(3) and 35, it gives an impression that authority intends to tap the withholding agent, rather than the service providers, which ultimately appears to be against the principle of tax assessments, withholding tax regime and even various provisions of KPK Act. We understand that this amendment is in contrary to the scope and liability of withholding agent, who could not be burdened further to check and monitor the compliance to be made by service providers.

Assessment of Tax

Section 40

The bill proposed following amendments under Section 40 of the KPK Act:

1. Scope

The scope of Section 40 is proposed to be widened to include non-compliant withholding agent under its ambit as well. This will provide legal backing to the proceedings undertaken or to be undertaken against the withholding agent.

Further, the scope of Section 40 and 68 has been distinguished by adding an explanation whereby any short payment of tax by a registered person would remain covered under the scope of section 40; however, if such short payment is through collusion, fraud etc. the provisions of Section 68 would apply.

2. Time limitation for adjudication

The bill proposes that the time limitation of 5 years for issuance of show cause notice, passing of order within 120 days of show cause notice and power to further amend assessment would equally be applicable on proceeding initiated against the non-compliant withholding agent. This amendment would ensure that the relevant provisions of section 40 are applicable to the proceeding initiated against the withholding agent as are currently applicable on the proceeding initiated against the service provider.

Further, it has been proposed that adjournment given by the officer due to any genuine reason would not be considered for calculating the period of one hundred and twenty days' time for concluding the proceeding against showcause notice.

3. Audit proceedings

Through insertion of Explanations 2, it is proposed to widen the definition of audit by including departmental audit, external audit, special audit or any other scrutiny of records, facts and tax affairs in any manner, style or mode, resembling audit or appearing like audit under its ambit.

Offences and Penalties

Section 64

The bill proposes penalty on the non-compliant withholding agent by adding relevant Section i.e. Section 30(2) in the offence / penalty table against Serial No. 1, 2, 4, 5, 6, 8 and 9, covering following offences, and imposed penalty on person who:

- is required to apply for registration under this Act;
- fails to furnish a return within the due date or furnishes it after the due date;
- fails to deposit the amount of the tax due;
- fails to maintain records required under this Act or the rulesp;
- fails to produce any record which he is bound to maintain under this Act or the rules made thereunder.

Default Surcharge

Section 65

The bill proposes to add a new sub-section for calculating the amount of default surcharge on the basis of quarterly average of interbank rate as announced by the State Bank of Pakistan. Further, it has been proposed that default surcharge would not be calculated on compound basis and would be prorated for number of days that remain short in a month.

Exemption from penalty and default surcharge

Section 66

Section 66 empowers the government to exempt any registered person or taxable service from payment of default surcharge and penalty through notification. Earlier such notifications were required to be presented before the council.

Now, it is proposed that such notification would be presented before the Provincial Assembly of Khyber Pakhtunkhwa. This amendment is in line with the judgements of the superior courts which have held that tax can only be levied and exempted with the approval of the cabinet.

Recovery of tax not levied or short levied

Section 68

The bill has proposed to enhance the time limitation period for issuance of show cause notice against recovery of tax not levied or short levied for relevant tax period from three years to five years. We understand such an amendment will have a prospective application.

Further, it has been proposed that for calculating the period of one hundred of twenty days' time for conclusion of proceeding against show cause notice, the time taken by the through adjournment without any limitation on the number of days will be considered.

Procedure in Appeal

Section 80

Currently, the Collector (Appeals) is required to serve hearing notice to the assessing officer or author of Order. However, the bill proposes service of the aforesaid notice to authorized officer of the Authority, having jurisdiction. Such amendment is made to cater the cases where jurisdiction of officers gets transferred and to ensure the timely service of hearing notice to the concerned officer.

Further, the bills seeks to insert a proviso empowering the adjudicating officer or any other officer nominated by Director General to defend the case before Commissioner Appeals. However, we understand that KP Government is required to issue notification under Section 31 of the KP Finance Act, 2013 to empower such officer to plead the case before Collector (Appeals).

Decision in Appeal

Section 81(2)

Presently, the Collector (Appeals) of KPRA cannot remand any case for denovo consideration likewise other provincial authorities. However, by virtue of insertion of Proviso in Section 81(2), the bill seeks to empower Collector (Appeals) to remand cases for denovo consideration in special circumstances, by recording the reasons and purposes in writing.

This insertion may provide benefit to Collector (Appeals) to decide the case within stipulated time as provided under Section 81(5) of the KP Finance Act, 2013 and remand those cases which were not properly assessed at adjudication stage.

Appeal to Appellate Tribunal

Section 84(1)

The bill seeks to insert a proviso under Section 84(1), through which an officer nominated by Director General is also empowered to plead any specific case or class of cases before Appellate Tribunal besides an authorized officer of the Authority.

Condonation of time limit

Section 99

There are two proposed amendments in this section. First is rectificatory in nature, as the word "tax" also includes default surcharge and penalty. Therefore, the word "penalty or default surcharge levied" is proposed to be deleted in sub-section 2.

In the case of second amendment, the bill proposed to place jurisdictional restriction on officers and collectors to condone only such case as fall under their respective jurisdiction.

AMENDMENTS IN SECOND SCHEDULE TO KPK ACT

The bill proposes following amendments in Second Schedule to the KPK Act

S.No.	Description	Proposed Rate	Comments
1	Hotels, Motels, Clubs or Guest Houses	8% [without input tax adjustment]	Services provided by local non-corporate stand alone hotels and clubs
		5% [without input tax adjustment]	Hospitality businesses located in the Galiyat and Kaghan Valleys
5.	Labour & Manpower Supply Services	8% [without input tax adjustment]	non-corporate entities
		15%	corporate sector entities
5.	Business Support Services	5% [without input tax adjustment]	non-corporate entities
		15% or 8% [without input tax adjustment]	There is an anomaly in respect of tax rates against provision of such services by corporate entities. It needs to be clarified whether these services would be taxed at standard rate or reduced rate.
8.	Corporate Sector Dealers	2% [without input tax adjustment]	Corporate sector dealers
10.	Franchise Services	15%	For all sectors
		Exempt	Franchise service related to health is proposed to exempt
13.	Contractual Execution of work	5% [without input tax adjustment]	Cleaning, fumigation and decontamination is also proposed to be taxed.
14.	Services provided by Construction Contractors & Allied professions	2% [without input tax adjustment]	Government funded construction projects including ADP / PSDP and construction of Hydropower projects
		5% [without input tax adjustment]	Other
		Exempt	<ul style="list-style-type: none"> ▪ Projects of Public Sector Development Programme ▪ low cost housing projects and schemes of Provincial Housing Authority of Khyber Pakhtunkhwa
16.	Lease and License	2% [without input tax adjustment]	For Government Departments
19	Services of Practitioners, Professionals, Consultants & allied	15%	For corporate entities, subsidiary or any branch of Foreign Service
26.	Life Insurance Service	15%	Earlier, life insurance services was exempt

Second Schedule - Services Taxable at reduced rate of 1%

The Bill seeks to reduce the sales tax rate up to one percent on following services (without input tax adjustment).

- Advertisement services in respect of print media.
- Services provided by stand-alone car wash stations.
- Cinematographic production, photographic, recording and telecasting or broadcasting services.
- Health insurance services and services in respect of Government sponsored Sehat Card Plus program.¹
- Cold storage services.
- Underwriters including sponsorship services.
- Services provided by auctioneer.
- Quality assurance or certification including other services listed thereunder.
- Erection, commissioning or installation services².

SECOND SCHEDULE - PRINCIPLES OF APPLICATION AND INTERPRETATION

The bill proposed following amendments in principles of application and interpretation of Second Schedule:

- It is proposed to disallow input tax against specified services to all service recipient whether engaged in taxable service or otherwise.
- The service provider upon request of service recipient may charge standard sales tax rate on service subject to reduced rate.
- It is proposed that the Authority shall issue notification or order for grant of tax exemption against any commitment of the Federal Government or Government of Khyber Pakhtunkhwa under either of any international convention, treaty or agreement, foreign grant-in-aid assistance including free technical assistance to Government.
- It is proposed that corporate sector entities other than public Sector entities shall charge sales tax at standard rate of 15% instead of reduced rate on following services:
 - ❑ Specialized workshops;
 - ❑ Franchise Services;
 - ❑ Specialized agencies;
 - ❑ Contractual execution;
 - ❑ Airport and dry port services;

² Prior to this amendment, life and health insurance services were exempt from tax, however this proposition has brought both services into tax net.

- Event management and exhibition;
 - Storage/warehousing and container terminal services;
 - Quality assurance;
 - Installation, erection, commissioning services.
- However, where services provided by dealers of agricultural machinery equipment, commissioner agent of agricultural and other specified services with respect to agricultural shall be charged to tax at 2% without input tax adjustment.

AMENDMENTS IN SINDH SALES TAX ON SERVICES ACT, 2011

No changes has been proposed under Sindh Sales Tax on Services Act, 2011.

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