



**SINDH SALES TAX ON SERVICES (AMENDMENT) ACT, 2021**  
**(As assented on 08 March 2023)**

**TAX MEMORANDUM**

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## Overview

This Memorandum gives a brief overview of amendments made in Sindh Sales Tax on Services Act, 2011 [SSTSA] through Sindh Sales Tax on Services (Amendment) Act, 2021 [Amendment Act]

We understand that efforts have been made by legislature to remove anomalies under SSTSA through Amendment Act. We also understand that the legislature has also endeavored to remove pitfalls under various provisions of SSTSA. At the same time, certain provisions of SSTSA have been given retrospective effect by Sindh Assembly which, we feel may pass through test of litigation at appellate forums.

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 tax memorandum is also available online and can also be accessed at our website [www.mooreshekhamufti.com](http://www.mooreshekhamufti.com)

**21 March 2023**

## **ACTIVE TAXPAYERS**

### [Section 2\(1A\), 25B](#)

Definition of 'Active Taxpayer' has been introduced through newly inserted Clause (1A) at Section 2. The following category of registered persons have been recognized as inactive taxpayers.

- ✓ Person whose registration is suspended.
- ✓ Person who fails to file his returns for 04 months consecutively.

Through insertion of another Section 25B, SRB have been empowered to prepare and maintain 'Active Taxpayers List'. The underlying objective of insertion provisions seems to activate monitoring of registered person who fails to comply with express provisions of SSTSA.

## **BUSINESS SUPPORT SERVICES**

### [Section 2\(19\)](#)

The aforesaid definition encompasses various categories of services which fall in the ambit of 'business support services'. Through Amendment Act, the scope of business support services has been enhanced by including 'processing, clearing and settlement services in relation to securities, commodities and future contracts.'

## **SOFTWARE OR IT BASED SYSTEM DEVELOPMENT CONSULTANT**

### [Section 2\(84B\)](#)

The definition of 'software or IT based system development consultant' has been revamped and expanded by introducing new Clause (84B) at Section 2. Through insertion of new definition, wide range of services have been included in relation to Software and IT Services.

## **TAXABLE SERVICES**

### [Section 3\(1\)](#)

Section 3(1) deals in scope of taxable services to have been provided or rendered by registered person from registered office or place of business in Sindh.

Through Amendment Act, the word 'registered' has been removed to align the law with Punjab Sales Tax on Services Act, 2012. Prior to such amendment, only those services were construed to be taxable services as rendered or provided by registered person. Consequent to this amendment [supra], rendition of taxable services would be taxable event irrespective of registration status of service provider. We understand such change in law has been made to remove an anomaly in Section 3(1).

## **ECONOMIC ACTIVITY**

### [Section 4\(3\)](#)

Section 4 defines an economic activity to mean any activity carried on by a person that involves rendition of services to another person. Under the law, the services of an employee rendered in the capacity to his employer is excluded from the ambit of economic activity.

By virtue of a proviso added in sub-section 3, the activities of employee against which he has earned any fee or

commission from employer, has been construed as economic activity. We understand that such employees having salary and commission arrangement with their employers as is the case of insurance, brokerage, marketing sectors, etc., would now be liable to SST in terms of Section 4(3).

The effect of such an amendment shall be upon salaried individuals earning commission income who would not only be exposed to payment of sales tax, but also face withholding of sales tax in the hands of employees on fee or commission income under Sindh Sales Tax Special Procedure (Withholding) Rules, 2014.

Further, SRB would also require such salaried persons to obtain sales tax registration with SRB. It looks while making the aforesaid change in the law, the SRB did not account for the corresponding implications under the Income Tax Ordinance, 2001, where any fee or commission paid to employee is treated as part of salary.

Notwithstanding above, 2nd Schedule of the SSTA has not been amended to specify the exact Tariff Heading within which such employee would become a service provider. In fact, SRB has attempted to recover sales tax from all payments which FMCGs, pharmaceuticals, distributors, large scale manufacturing, etc. make to their employees upon achieving the pre-determined KPIS. The apparent implication of such change would be: -

- ✓ Employee would be required to register themselves with SRB.
- ✓ Employee would be liable to issue sales tax invoice to the employer and charge sales tax on commission components.
- ✓ Employee would file monthly sales tax return; maintain statutory records and face audit/monitoring of such transactions.
- ✓ The employee would claim the aforesaid sales tax as his input tax records.

We understand all the above stipulation are practically impossible for salaried employees. Considering the severe business impact of aforesaid amendment, we are of the view that the same may need to be revisited by SRB and withdrawn. Alternatively, the issue may land before the Courts on account of jurisdiction and practical aspects.

## **SCOPE OF TAX**

### [Section 8\(1\)](#)

Section 8 empowers the Board to levy sales tax at higher or lower rate through issuance of notification for specific period. By virtue of amendment at this Section, the time-bound restriction for imposing higher or lower sales tax has been done away with by Sindh Assembly. Therefore, SRB is now empowered to exercise its powers to prescribe lower or higher sales tax for indefinite period.

## **PERSON LIABLE TO PAY TAX**

### [Section 9\(1\)](#)

At present, Section 9(1) places liability for payment of sales tax upon registered person i.e., service providers registered with SRB. However, the word 'registered' has been omitted at Section 9 through the Amendment Act. Consequent to such amendment, the liability for payment of sales tax rests with service provider irrespective of its registration status with SRB. The apparent effect of this change is to empower SRB to recover sales tax due on services from the service providers.

## **INPUT TAX CREDIT NOT ALLOWED**

### [Section 15A\(1\) \(bb\) \(bbb\) \(kk\) & Section 84](#)

Section 15A disallows input tax on various categories of goods and services for registered service providers. A new clause (bb) has been inserted which debars input tax adjustment to registered persons in relation to services acquired from unregistered service provider. Through amendment in Section 84, the effective date of said provision is declared to be 01 July 2016.

We understand that the immediate effect of aforesaid such provision is deprivation of input tax adjustment / refund of tax to registered person as are incurred by them on procurement of services from unregistered person. The said amendment has in fact nullified effect of reported judgment of Honorable Sindh High Court dated 27 October 2020, whereby the Honorable Court had confirmed legitimacy of such tax amount as valid input tax for registered persons who withheld and deposit such tax in provincial kitty. Later on, the Supreme Court of Pakistan also endorsed said High Court's judgment.

Through insertion of 02 other Clauses (bbb) (kk) at Section 15A, the legislature has also disallowed input tax for registered person upon receipt of service from following categories of persons:

- ✓ Non-Active taxpayer under SSTSA and ST Act or any Other Provincial Sales Tax Law
- ✓ Input tax relating to goods or services as are disallowed under Federal and Provincial Sales Tax Laws

Identical provisions also exist under Section 8(1) of the Sales Tax Act, 1990 [ST Act].

## **JOINT AND SEVERAL LIABILITY OF PERSONS WHERE TAX UNPAID**

### [Section 18](#)

Section 8 deals in joint and several tax liability upon registered persons in case where sales tax is not paid by service provider in provincial kitty. By way of amendment at Amendment Act, the burden to furnish evidence is placed on tax department in case of such non-payment of sales tax by respective service provider. Identical amendment is also existent at Section 8A of ST Act.

The aforesaid amendment will minimize issuance undue notices by tax department which are generally issued on pretext of non-payment of sales tax in supply chain.

## **ASSESSMENT OF TAX**

### [Section 23](#)

An amendment has been made, whereby SRB Officer is empowered to issue notices for non-compliance of any provision of Section 27. The said amendment will mean that taxpayers, who fail to produce records before SRB officials may issue show cause notice for levy of penalty.

## **AUDIT PROCEEDINGS**

### [Section 28](#)

A new sub-section 2A has been inserted whereby Officer of SRB is empowered to conduct sales tax audit electronically through video-link or any other prescribed mode. The said amendment is in line with identical provision as is available in Section 25 of ST Act.

## **SALES TAX RETURN**

### [Section 30](#)

Electronic filing of sales tax return has been made compulsorily while making necessary amendment. Necessary amendments have also been made to remove pitfall in this Section.

## **POWER TO SEAL THE BUSINESS PREMISES**

### [Section 54B](#)

Through newly inserted Section 54B, SRB Commissioner is empowered to seal any business premises of any persons in case of happening of any event.

- ✓ Failure to obtain sales tax registration.
- ✓ Become non-active taxpayers or
- ✓ Consecutive non-compliance to provisions of SSTSA

Such discretionary powers as vested with Commissioner SBR, may lead to enhancement in litigation and unrest among businesses.

## **DECISION IN APPEAL**

### [Section 59](#)

The time period for passing appellate order by Commissioner-Appeals, SRB has been increased from 120 to 180 days.

## **APPOINTMENT OF APPELLATE TRIBUNAL**

### [Section 60](#)

By virtue of amendment at aforesaid Section, Technical Member of Customs Appellate Tribunal or Accountant Member of Appellate Tribunal, Inland Revenue Services who served for a period of at least one year, may be appointed as Technical Member at Appellate Tribunal, SRB.

Further, any person who worked as Commissioner (Appeals) SRB / FBR could be appointed as Member Tribunal. Now Commissioner of SRB or Commissioner-Appeals SRB is entitled to become Member Technical, SRB Tribunal, if he has served as Commissioner/Commissioner Appeals at SRB for a period of Five (05) years.

## **SERVICE OF ORDERS AND DECISIONS**

### [Section 75](#)

03 new Clauses have been added at Section 75 whereby legal protection has been provided to departmental notices, orders and requisite records as served electronically to registered person through email or to the e-folder maintained with SRB.

**ISSUANCE OF DUPLICATE OF SALES TAX DOCUMENTS**

[Section 77](#)

Prescribed fee for obtaining duplicate attested copy has been increased from Rs.500 to Rs.1000 per document or Rs.200 to Rs.250. By virtue of amendment, only registered person may avail such facility from SRB.

**DELEGATION OF FUNCTIONS AND POWERS BY THE BOARD**

[Section 81A](#)

SRB has been empowered to delegate power and function to any office bearer of SRB. The aforesaid amendment being beneficial nature would help in reduction of work burden and delay in disposal of procedural matters by SRB.

**SINDH SALES TAX ACT TO OVERRIDE OTHER LAWS**

[Section 83A](#)

A newly inserted Section 83A provides overriding effect of all provisions of SSTSA over other laws of land. As per our understanding, the laws attributable to Federal Government would have binding effects over provincial laws. Hence, we anticipate litigation over biding effect of SSTSA over Federal Laws.

**NEWLY SERVICES UNDER TAX NET**

[Second Schedule](#)

Following services will now be taxable @13%

9813.1000	Insurance companies in relation to guarantees including an insurance guarantee.
9813.1700	Services provided or rendered in relation to guarantees, including an insurance guarantee.
9856.0000	Services provided or rendered by truck aggregators and the services provided or rendered by the owners or drivers of trucks or other cargo transportation vehicles using the services of a truck aggregator.

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