

Punjab Finance Bill 2016

SALES TAX ON SERVICES



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AMMENDMENTS INPUNJAB SALES TAX ON SERVICES ACT, 2012**1. SCOPE OF TAX AND ALLIED MATTERS ---- OMISSION OF SUB SECTION (4) FROM SECTION 10:**

It is proposed to omit sub section (4) of section 10 of the Act which inter alia prescribes that

(4) A person required to pay tax under this Act shall be entitled to deduct from the payable amount, the amount of tax already paid by him on the receipt of taxable services used exclusively in connection with taxable services provided by such person subject to the condition that he holds a true and valid tax invoice not older than six tax periods, showing the amount of tax earlier charged and paid under the Act on the services so received but the Authority may, by notification in the official Gazette, disallow or restrict such deduction in case of any service or services as it may deem appropriate.

The law related to adjustment of tax is being consolidated in substituted provisions of section 16 which is proposed to be substituted w.e.f. 01.07.2016

2. SPECIAL PROCEDURE AND TAX WITHHOLDING PROVISIONS ---- INSERTION OF SUB SECTION (3) IN SECTION 14:

It has been invariably held by the Appellate Tribunal Inland Revenue that in case where a withholding agent fails to withhold the amount of sales tax, the provisions of section 11 of the Sales Tax Act, 1990 cannot be invoked for recovery of the amount of withholding sales tax in default from the withholding agent. It has been inter alia held that section 11 is applicable only in the case of supplier i.e. if the supplier has not paid the tax due on supplies made by him, or has made short payment or has claimed input tax credit or refund which is not admissible under the Act. It has been held by the learned ATIR in its various pronouncements that section 11 cannot be invoked to burden a registered person for the alleged non withholding of sales tax. In order to nullify the ratio laid down by the learned ATIR, the federal legislature has proposed to insert new sub section (4A) in section 11 of the Sales Tax Act, 1990 which prescribes that where any person, required to withhold sales tax under the provisions of this Act or the rules made there under, fails to withhold the tax or withholds the same but fails to deposit the same in the prescribed manner, an officer of Inland Revenue shall after a notice to such person to show cause, determine the amount in default. Parallel provisions have also been proposed to be included in Sindh Sales Tax on Services Act, 2011 by inserting sub section (1B) in section 47 in Sindh Sales Tax on Services Act, 2011 whereas through Punjab Finance Bill, 2016 it has also been proposed to insert the new sub section (3) in section 14 which would prescribe as under:

(3) Where a person or class of persons is required to withhold or deduct full or part of the tax on the provision of any taxable service or class of taxable services and either fails to withhold or deduct the tax or having withheld or deducted the tax, fails to deposit the tax in the Government treasury, such person or class of persons shall be personally liable to pay the amount of tax to the Government in the prescribed manner.

3. DEDUCTION AND ADJUSTMENT OF TAX ON INPUTS TO THE BUSINESS ---- SUBSTITUTION OF SECTION 16

The existing section 16 captions "Adjustments". It is proposed to substitute the existing provisions of section 16 and the substituted provisions would prescribe as under: **"16. Deduction and adjustment of tax on inputs to the business.** – (1) A person required to pay tax under this Act shall be entitled to deduct from the payable amount, the amount of tax payable or already paid by him on the receipt of taxable services exclusively used in connection with the taxable services he provides, subject to the condition that he holds a true and valid tax invoice not older than six tax periods, showing the amount of tax charged under the Act on the services so received, but the Authority may disallow or subject to additional conditions

may restrict such deduction in cases or with respect to taxable services or goods specified in section 16A or section 16B or the rules.

(2) The Authority may, subject to section 16A or section 16B or to such conditions and restrictions as may be prescribed, allow registered persons to claim adjustments or deductions, including refunds arising as a result thereof, in respect of the tax paid or payable under any other law in respect of any taxable service or goods or class of taxable services or goods used in connection with the taxable services such persons provide.

(3) For purposes of subsection (2), the Authority may adopt the principles or concepts laid down in such other law in respect of adjustments, deductions or refunds including zero-rating principle.

(4) For purposes of subsections (1) and (2), the amount of tax to be deducted or adjusted shall not include any amount of additional tax, default surcharge, fine and penalty or fee imposed or charged under this Act or any other law.

4. CERTAIN TRANSACTIONS NOT ADMISSIBLE ---- INSERTION OF SECTION 16A

Section 73 of the Sales Tax Act, 1990 prescribes that the registered person shall make payment of the amount of invoice, exceeding Rs. 50,000, through a banking instrument showing transfer of the payment within 180 days from the business bank account of the buyer to the business bank account of the supplier. The payment on account of utility bills has been excluded from the purview of section 73. It is proposed to insert a new section 16A in Punjab Sales Tax on Services Act, 2012 which contains provisions parallel to those of section 73 of the federal Sales Tax Act, 1990 however exclusion has not been granted to payment against utility bills. As per explanation, the registered service provider is obliged to declare his business bank account to PRA in the prescribed manner. The proposed section 16A is as under:

“16A. Certain transactions not admissible.–

(1) Subject to subsection (1), notwithstanding anything contained in this Act or any other law for the time being in force, payment of the tax amount for a transaction exceeding value of fifty thousand rupees, shall be made by a crossed cheque drawn on a bank or by crossed bank draft or crossed pay order

Or any other crossed banking instrument showing transfer of the amount of the sales tax Invoice in favor of the service provider from the business bank account of the service Recipient.

(2) Online transfer of payment from the business account of service recipient to the business account of service provider as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective service recipient and the service provider.

(3) The service recipient shall not be entitled to claim input tax credit, adjustment or Deduction, or refund, repayment or zero-rating of tax under this Act if payment for the amount is made otherwise than in the manner prescribed in subsection (1), provided that Payment in case of a transaction on credit is transferred within one hundred and eighty Days of issuance of the tax invoice.

(4) The amount transferred in terms of this section shall be deposited in the business Bank account of the service provider; otherwise, the service provider shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or zero-rating Of tax under this Act.

Explanation, - For purposes of this section, the term “business bank account” means a bank account utilized by the registered person for business transactions, declared to the Authority in the prescribed manner.”

5. TAX CREDIT NOT ALLOWED ---- INSERTION OF SECTION 16B

Rule 4 of the Punjab Sales Tax on Services (Adjustment of Tax) Rules, 2012 captions "input tax adjustment not allowed" and as many as 11 classes of goods/services have been prescribed therein on which a registered service provider is not entitled to claim input tax adjustment. It is proposed to insert a new section 16B in the Act and as many as 20 classes of goods and services have been specified on which a registered person shall not be entitled to claim credit of input tax. The proposed provisions of section 16B are as under:

16B. Tax credit not allowed. –

(1) notwithstanding anything contained in this Act or the rules, a registered person shall not be entitled to claim input tax adjustment in respect of:

- (a) capital goods (plant, machinery, equipment and others) not exclusively useable or used in providing taxable services;
- (b) goods and services already in use on which the tax is not paid, or, where paid, the input adjustment has been taken before the commencement of the Act or where the input related goods and services were purchased or acquired before such commencement;
- (c) utility bills not in the name of registered person with reference to his registered premises unless evidence of consumption is produced in the matter of such claims;
- (d) the tax claimed as input tax on services where such tax amount has not been deposited by the supplier or the service provider or where the evidence of such payment is not produced;
- (e) carry forward of the input tax adjustment relating to the period prior to the commencement of the Act;
- (f) goods and services received against false, fake, forged, flying, untrue, unreal or unrelated invoices or against purchases from the persons black listed or suspended by the Authority or by the Federal Board of Revenue or by any other Provincial authority;
- (g) goods and services liable to a tax rate lesser than sixteen per cent of the charges or to a specific rate of tax not based on value when used for providing or rendering any service;
- (h) goods and services used or consumed in a service liable to a rate of tax lesser than the sixteen per cent of the charges or to a specific rate of tax not based on value;
- (i) vehicles including three and two wheelers;
- (j) food, beverages, garments, fabrics or others and consumption on entertainment, amusement, recreation or enjoyment;
- (k) gift and giveaway;
- (l) goods or services used or to be used for any purpose other than for taxable supplies made or to be made by him;
- (m) goods and services acquired for personal or non-business consumption;
- (n) goods and services not related to the taxable supplies made by the registered person;
- (o) goods and services in respect of which input tax adjustment is barred under the respective federal and provincial sales tax law;

- (p) sales tax paid to the Federal Government or any other Provincial Government for supply of goods or provision of services, if the sales tax law of the Federation or the Province concerned does not allow adjustment of tax paid under this Act;
 - (q) from the date to be notified by the Authority, such goods and services which, at the time of filing of return by the buyer, have not been declared by the supplier in his return;
 - (r) further tax, extra tax and value addition tax levied under the Sales Tax Act, 1990, and the rules or notifications issued there under;
 - (s) goods used in, or permanently attached to, immoveable property, such as building and construction material, paints, electrical and sanitary fittings, pipes, wires, cables, glass products and furniture, furnishings, office equipment, excluding those directly used in the economic activity of registered persons paying sales tax at a rate of not less than sixteen per cent; and
 - (t) Such goods or services as are notified or specified by the Authority to be inadmissible for input tax adjustment.
- (2) No person other than a registered person shall make any deduction or reclaim input tax in respect of taxable services made or to be made by him.
- (3) Notwithstanding anything contained in any other law for the time being in force or any decision of any court, for purposes of this section, no input tax credit shall be allowed to the persons who paid fixed tax under any provisions of this Act or under the respective federal or provincial sales tax law.

6. RETURN ---- INSERTION OF SUB SECTION (1A) IN SECTION 35

It is proposed to insert a new sub section (1A) in section 35 which would read as follows:

(1A) A statement, in the prescribed manner, filed by a person who is only obliged to withhold or deduct tax, shall be treated as a return of that person, provided that such a statement shall not be a substitute for the return required to be filed by a person providing taxable services.

7. ENHANCEMENT OF PENALTY WHERE A PERSON FAILS TO FURNISH RETURN WITHIN DUE DATE ---- AMENDMENT IN SR. NO. 2 OF THE TABLE IN SECTION 48

The entry at Sr. No. 2 of the Table given in sub section (2) of section 48 of the Act prescribes penalty where a person fails to furnish a return within the due date. After amendment, such a person would be liable to pay a penalty of ~~five~~ ten thousand rupees provided if a return is not filed within fifteen days after due date, a penalty of ~~hundred~~ two hundred rupees for each day of default shall be levied.

8. POWERS OF ADJUDICATION ---- MONITORY LIMIT OF ADJUDICATION BY DEPUTY COMMISSIONER PRESCRIBED IN SECTION 60

It is proposed to amend clause (b) of sub section 1 of section 60 of the Act and after amendment, the Deputy Commissioner PRA would be empowered to adjudicate the cases where the amount of tax involved or the amount erroneously refunded does not exceed two and a half million rupees.

9. RECOVERY OF ARREARS OF TAX UNDER SECTION 70 TO BE MADE ONLY BY OFFICERS OF PRA APPOINTED UNDER SECTION 39

It is proposed to make a corrective amendment in sub section (1) of section 17 which would read as "Subject to sub section (2), where an amount of tax is due from any person, the officer of Authority appointed under section 39 may (a) (f).

10. THE FIRST SCHEDULE --- AMENDMENT IN DESCRIPTION AGAINST HEADING 9809.0000

After proposed amendment the description of services classified under heading 9809.0000 would read as follows:

Services provided by persons engaged in contractual execution of works or furnishing supplies.

Corresponding amendment has also been made in the description of services specified in column (2) of entry at Sr. No. 16 of the Second Schedule

11. AMENDMENTS IN THE SECOND SCHEDULE

Second schedule of the Act covers those services which are liable to sales tax. All other services which have not been specified in the Second Schedule are exempt from sales tax. Telecommunication services of heading 98.12 are subjected to sales tax @ 19.5% whereas all other taxable services are subjected to sales tax @ 16%. Amendments have been proposed in the Second Schedule as follows:

- 11.1. Substitution of description of services at Sr. No. 1: In terms of existing entry at Sr. No. 1, 16% sales tax is to be charged on following services

Services provided by hotels motels, guest houses, marriage halls and lawns (by whatever name called) including pandal and shamiana services, clubs including race clubs and caterers including all ancillary or allied services such as floral or other decoration, furnishing of space whether or not involving rental of equipment and accessories.

It is proposed to substitute the description of services specified at Sr. No. 1 and after substitution 16% sales tax would be levied on services provided by hotels, motels, guest houses, marriage halls and lawns (by whatever name called) including pandal and shamiana services, catering services (including all ancillary/allied services such as floral or other decoration, furnishing of space whether or not involving rental of equipment and accessories) and clubs including race clubs and their membership services including services, facilities or advantages, for a subscription or any other amount, to their members.

- 11.2. Substitution of description of services at Sr. No. 2: In terms of existing entry at Sr. No. 2, 16% sales tax is to be charged on following services classified under headings 9802.1000 and 9802.2000

Advertisement on television and radio, excluding advertisements--

- (a) Sponsored by an agency of the Federal or Provincial Government for health education;
- (b) Financed out of funds provided by a Government under an agreement of foreign grant in aid.
- (c) conveying public service message, if telecast on television by World Wide Fund for Nature (WWF) or United Nations Children's Fund Unicef

It is proposed to substitute the description of services specified at Sr. No. 2 and after substitution 16% sales tax would be levied on following services classified under headings 9802.1000, 9802.2000 and respective headings

Advertisement on television and radio or advertisement services showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, excluding advertisements:

- (a) sponsored by an agency of the Federal or Provincial Government for health education; or
- (b) financed out of funds provided by a Government under an agreement of foreign grant-in-aid; or
- (c) conveying public service message, if telecast on television by the World Wide Fund for Nature (WWF) or United Nations Children's Fund (UNICEF).

11.2. Substitution of description of services at Sr. No. 14: In terms of existing entry at Sr. No. 14, 16% sales tax is to be charged on construction services classified under headings 9824.000 and 9814.2000

EXCLUDING

- (i) Where the tax is otherwise paid by registered persons as property developers, builders or promoters for building construction; or
- (ii) Where the construction work is funded under an agreement of foreign grant-in-aid or involves construction of consular buildings; or
- (iii) Government civil works including those of Cantonment Boards; or
- (iv) Residential construction projects where the covered area does not exceed 10,000 square feet for a house and 20,000 square feet for an apartment except where construction services are provided to construct more than one house or more than one apartment building.

It is proposed to substitute the description of services specified at Sr. No. 14 and after substitution 16% sales tax would be levied on following services classified under headings 9824.0000 and 9814.2000

Construction services and services provided by contractors of building (including water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical works (including air conditioning), horticultural works, multi-discipline works (including turn-key projects) and similar other works but:

EXCLUDING:

- (i) where the tax is otherwise paid by registered persons as property developers, builders or promoters for building construction; or
- (ii) where the construction work is funded under an agreement of foreign grant-in-aid or involves construction of consular buildings; or
- (iii) Residential construction projects where the covered area does not exceed 10,000 square feet for a house and 20,000 square feet for an apartment except where construction services are provided to construct more than one house or more than one apartment building.

11.4. Imposition of 16% sales tax on services of property developers/builders without excluding actual purchase value or documented cost of land: It is proposed to amend the description of services given in entry at Sr. No. 15 and after amendment 16% sales tax would be levied on services provided by property developers, builders and promoters (including their allied services).

11.5. Imposition of 16% sales tax on business auxiliary services: It is proposed to amend the description of services given in column (2) and classification given in column (3) of entry at Sr. No. 31. After amendment, 16% sales tax would be levied on services provided by business support services including business auxiliary services of headings 9805.9200, 9805.9090 & respective headings.

11.6. Imposition of 16% sales tax on collection and processing of domestic waste and street cleaning services: It is proposed to amend the description of services given in column (2) and classification given in column (3) of entry at Sr. No. 39. After amendment 16% sales tax would be levied on

Services provided for specified purposes including fumigation services, maintenance and repair (including building and equipment maintenance and repair including after sale services) or cleaning services including collection and processing of domestic waste and street cleaning services, janitorial services, dredging or desilting services and other similar services etc. classified under headings 98.22, 9860.0000 and respective headings

- 11.7. Imposition of 16% sales tax on transport of goods through transmission lines: It is proposed to amend the description of services given in column (2) of entry at Sr. No. 47. After amendment 16% sales tax would be levied on Services in relation to transport of goods other than water, through pipeline, conduit, transmission lines or any other medium (other than inland carriage of goods by road otherwise taxable or chargeable to tax as such).
- 11.8. New services subjected to 16% sales tax: It is proposed to insert 3 new entries 60, 61 & 62 in the Second Schedule through which 16% sales tax would be levied on
- (i) Services provided by cosmetic and plastic surgeons and hair transplant services but excluding Services provided to acid or burn victims.
 - (ii) Services provided by warehouses or depots for storage including cold storages classified under headings 9833.0000 and respective headings; and
- Services provided by Packers including handling and packaging services classified under headings 9819.1400, 9833.0000, 9841.0000 and respective headings.

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