

# SALES TAX ON SERVICES



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## AMENDMENTS PROPOSED IN SINDH SALES TAX ON SERVICES ACT, 2011 THROUGH SINDH FINANCE BILL, 2016

### SALES TAX ON SERVICES

#### 1. DEFINITIONS ---- INSERTIONS IN SECTION 2

Insertion of clause (29A)

It is proposed to insert a new clause (29A) which defines the term "cosmetic and plastic surgery" as follows:

(29A) "**cosmetic and plastic surgery**" includes the services provided or rendered by any person, in relation to aesthetic or cosmetic surgery or plastic surgery like Abdominoplasty (tummy tuck), blepharoplasty (eyelid surgery), mammoplasty, buttock augmentation and lift, rhinoplasty (reshaping of nose), otoplasty (ear surgery), rhytidectomy (face lift), liposuction (removal of fat from the body), brow lift, cheek augmentation, facial implants, lip augmentation, forehead lift, cosmetic dental surgery, orthodontics, aesthetic dentistry, laser skin surfacing, hair grafting, hair transplant and such other similar surgery.

#### Insertion of clause (31A)

It is proposed to insert a new clause 31A which defines the term "debt collection services and other debt recovery services" as follows:

(31A) "**debt collection services and other debt recovery services**" means the services provided by a person to a banking company or a financial institution including non-banking financial company or any other body corporate or a firm or a person, in relation to recovery of any sums due to such banking company or a financial institution including non-banking financial company or any other body corporate or a firm or a person, in any manner

#### Insertion of clause (60A)

It is proposed to insert a new clause 60A which defines the term "notification in the official Gazette" as follows:

(60A) "**notification in the official Gazette**" means a notification issued under this Act shall be effective from the day specified therein, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.

#### Insertion of clause (69A)

It is proposed to insert a new clause 69A which defines the term "public relations services" as follows:

(69A) "**public relations services**" includes strategic counseling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotion, events and communications and crisis communications.

#### 2. ADJUSTMENTS ---- INSERTION OF PROVISION SECTION 15

After insertion of proviso section 15 would read as follows:

**15. Adjustments.**--The Board may, by notification in the Official Gazette, and subject to such conditions and restrictions as it may prescribe and, allow registered persons to claim adjustments or deductions, including refunds arising as a result thereof, in respect of the sale tax paid on or in respect of any taxable services or class of taxable services provided by them: Provided that the refund arising as a result of a claim of adjustments or deductions, if any, shall be made on yearly basis in the month following the end of the financial year

**3. INPUT TAX CREDIT NOT ALLOWED ---- INSERTION OF SECTION 15A**

It is proposed to add a new section 15A parallel to section 8 of the Sales Tax Act, 1990 and rule 4 of the Punjab Sales Tax on Services (Adjustment of Tax) Rules, 2012 dated 01.08.2012. Section 15A would read as follows:

**15A. Input tax credit not allowed.** (1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to -

- (a) the goods or services used or to be used for any purpose other than for the taxable services provided or rendered or to be provided or rendered by him;
- (b) the goods in respect of which sales tax has not been deposited in the Federal Government treasury by the respective suppliers of goods;
- (c) the services in respect of which the Provincial sales tax has not been deposited in the treasury of the respective Provincial Government, and the services in respect of which the Islamabad Capital Territory sales tax has not been deposited in the treasury of the Federal Government;
- (d) further tax, extra tax or value addition tax levied under the Sales Tax Act, 1990, and the rules or notifications issued thereunder;
- (e) fake, false, forged, flying or fraudulent invoices or the invoices issued by persons black-listed or suspended by Board or FBR or any other Provincial Sales Tax Authority;
- (f) capital goods and fixed assets not exclusively used in providing or rendering of taxable services;
- (g) the following goods or services, excluding the ones directly used and consumed in the economic activity of a registered person in provision of the services paying sales tax at a rate not less than thirteen *per cent ad valorem*:-
  - (i) vehicles classified under Chapter 87 of the First Schedule to the Customs Act, 1969 (Act No. IV of 1969) and parts (including batteries and tyres and tubes) of such vehicles;
  - (ii) calendars, diaries, gifts, souvenirs and giveaways;
  - (iii) garments, uniforms, fabrics, footwear, handwear, headwear for the employees;
  - (iv) food, beverages and consumptions on entertainments, meeting or seminars or for the consumption of the registered person or his Directors, shareholders, partners, employees or guests;
  - (v) electricity, gas and telecommunication services supplied at the residence of the employees or in the residential colonies of the employees;
  - (vi) building materials including cement, bricks, mild steel products, paints, varnishes, distemper, glass products;
  - (vii) office equipment and machines (excluding electronic fiscal cash registers), furniture, fixtures or furnishings;
  - (viii) electrical and gas appliances, pipes and fittings;
  - (ix) wires, cables, sanitary fittings, ordinary electric fittings, electric fans and electric bulbs and tubes; and
  - (x) crockery, cutlery, utensils, kitchen appliances and equipment;
- (h) utility bills not in the name of the registered person unless evidence of consumption of such utilities is provided to the satisfaction of the officer of the SRB not below the rank of an Assistant Commissioner;

- (i) goods or services procured or received by a registered person during a period exceeding six months prior to date of commencement of the provision of taxable services by him;
  - (j) goods or services used or consumed in a service liable to sales tax at *ad valorem* rate lesser than thirteen *per cent* or at specific rate at fixed rate or at such other rates not based on value;
  - (k) the amount of sales tax paid on the telecommunication services in excess of nineteen *per cent ad valorem* and the amount of sales tax paid on other taxable goods or services in excess of thirteen *per cent ad valorem*; and
  - (l) such goods or services as are notified by the Board to be in-admissible for input tax claim or reclaim or credit or adjustment or deduction
- (2) In case where a registered person deals with taxable and non-taxable or exempt services, he shall be entitled to claim or reclaim, for input tax credit or adjustment or deduction, only such proportion of the input tax as is attributable to taxable or non-exempt services in such manner as may be prescribed by the Board.
- (3) No person other than a person registered under sections 24, 24A or 24B or this Act shall claim or deduct or adjust any input tax in respect of sales tax paid on any goods or services received or procured by him for use or consumption in the provision of taxable services.

#### 4. JOINT AND SEVERAL LIABILITY OF REGISTERED PERSONS WHERE TAX UNPAID ---- OMISSION OF WORD "REGISTERED" IN SECTION 18

After omission/substitution, section 18 would read as follows:

**18. Joint and several liability of a person where tax unpaid.**--Where a person receiving a taxable service from a registered person is in the knowledge of or has reasonable grounds to suspect that some or all of the tax payable in respect of that taxable service or any previous or subsequent taxable service provided would go unpaid, such person as well as the person providing the taxable service shall be jointly and severally liable for payment of such unpaid amount of tax:

Provided that the Board may by notification in the official Gazette, exempt any transaction or transactions from the provisions of this section.

#### 5. SALE OF TAXABLE ACTIVITY OR TRANSFER OF OWNERSHIP ---- SUBSTITUTION / INSERTION IN SECTION 19

After proposed substitution/insertion, section 19 would read as follows:

**19. Sales of taxable activity or transfer of ownership.**--In the case of sale or transfer of ownership of a business which provides taxable services to another person as an ongoing concern, any tax chargeable or assessed or determined in relation to the taxable services or part thereof shall be accounted for and paid by the person to whom such sale is made or ownership is transferred:

Provided that if the tax payable by person remains unpaid, the amount of the unpaid tax shall be the first charge on the assets of the business and the persons buying and selling the business shall be jointly and severally liable for payment of the tax.

#### 6. ASSESSMENT OF TAX ---- INCREASE IN THE PERIOD OF MAKING ASSESSMENT ---- AMENDMENT IN SECTION 23

It is proposed to increase the time limitation for making assessment of tax from five years to eight years. An amendment is proposed in sub section (2) which would read as follows:

(2) No order under sub-section (1) shall be made by an officer of the SRB unless a notice to show cause is given to the person in default within five eight years from the end of the tax period to which the order relates specifying the grounds on which it is intended to proceed against him and the said officer shall take into consideration the representation made by such person and provide him with an opportunity of being heard if the person so desires.

Insertion in sub section (8): After insertion sub section (8) would read as follows:

(8) Notwithstanding anything contained in this Act Board may prescribe thresholds, parameters, standards and basis for assessment of supply value and the assessment of tax and the Board shall also have the powers to regulate the system of assessment including the powers to transfer of cases and extension of time limit in exceptional circumstances

## **7. RETENTION AND PRODUCTION OF RECORDS AND DOCUMENTS ---- INCREASE IN THE PERIOD OF RETENTION ---- AMENDMENT IN SECTION 27**

It has been proposed to increase the period of retention of record by a person and after amendment, sub section (1) of section 27 would read as follows:

A person, who is required to maintain any record or documents under this Act, shall retain the record and documents for a period of ten years after the end of the tax period to which such record or documents relate or till the final decision in any proceedings including proceedings for assessment, appeal, revision, reference or petition, whichever is later.

## **8. RETURN ---- OMISSION OF SUB SECTION (5) OF SECTION 30:**

It has been prescribed in sub section (5) of section 30 that if there is a change in the rate of tax during a tax period, a separate return in respect of each portion of tax period showing the application of different rates of tax shall be furnished. Since SRB web portal does not allow furnishing of two returns for one tax period therefore it is proposed to omit sub section (5).

## **9. APPOINTMENT OF AUTHORITIES ---- SUBSTITUTION/ADDITION OF CLAUSES IN SUB SECTION (1) OF SECTION 34:**

After proposed amendment sub section (1) of section 34 would read as follows:

(1) For the purposes of this Act, the Board may, by notification in the official Gazette, appoint in relation to any area, any case or class of cases specified in the notification, any person to be--

- (a) a Director of the Sindh Revenue Board;
- (b) a Commissioner of the Sindh Revenue Board;
- (c) a Commissioner (Appeals) of the Sindh Revenue Board;
- (d) a Deputy Commissioner of the Sindh Revenue Board;
- (e) an Assistant Commissioner of the Sindh Revenue Board;
- (f) a Senior Auditor and an Auditor of Sindh Revenue Board;
- (g) a Sindh Sales Tax Officer of Sindh Revenue Board; and
- (h) an officer of Sindh Revenue Board with any other designation.

## 10. RECOVERY OF TAX NOT LEVIED OR SHORT LEVIED ---- INCREASE IN LIMITATION PERIOD OF ISSUANCE OF SHOW CAUSE NOTICE UNDER SECTION 47

10.1. It is proposed to increase in the period of issuance of show cause notice for recovery of tax from five to eight years. After proposed amendment, sub section (1) of section 47 would read as under:

(1) Where by reason of some inadvertence, error or miscalculation any tax or charge has not been levied or has been short-levied, the person liable to pay any amount of tax or charge shall be served with a notice, within eight years of the relevant date, requiring him to show cause for payment of the amount specified in the notice.

10.2. Recovery of withholding sales tax in default ---- insertion of sub section (1B) in section 47: 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 inter alia held by the learned ATIR 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 which prescribes that

(1B) Where any person, required to withhold tax under provision of this Act or rules made thereunder, fails to withhold the tax or fails to deposit the withheld or deducted amount of the tax in the prescribed manner, an officer of the SRB shall determine the amount in default and order its recovery in the prescribed manner.

10.3. A new sub section (6) has been added in section 47 which prescribes as under:

(6) Notwithstanding anything contained in this Act, the Board shall have the powers to regulate the system of determination of liability under this section including the powers for transfer of cases and extension of time limit in exceptional circumstances.

## 11. APPOINTMENT OF APPELLATE TRIBUNAL - AMENDMENT IN SECTION 60

It has been proposed to amend sub section (5) of section 60 and after amendment it would read as follows:

(5) Notwithstanding anything contained in sub-section (4), the Government may, for ten years from the day this Act comes into effect, appoint any person who has worked for a minimum of three years:--

- (i) in the Federal Board of Revenue or Provincial Excise and Taxation Department in the rank not below the Bs. 20 for 5 years in aggregate, or
- (ii) as Collector of Sales Tax (Appeals) under sub-section (b) of section 30 of the Sales Tax Act, 1990, for 3 years with service of at least 5 years in Bs. 20, as an Technical Member of the Appellate Tribunal.

## 12. REMOVAL OF DIFFICULTIES ---- INCREASE IN THE PERIOD FOR EXERCISING POWERS UNDER SECTION 74:

After proposed amendment section 74 would read as under:

74. Removal of difficulties.--The Government may, for the purposes of removing any difficulty or for bringing the provisions of this Act into effective operation, by order, direct that provisions of this Act shall, during such period as may be specified in the order, have effect subject to such adaptations whether by way of modification or addition or omission as it may deem to be necessary or expedient:

Provided that the power under this section shall not be exercised after expiry of eight years from the commencement of this Act.

## 13. AMENDMENT IN THE FIRST SCHEDULE ---- INSERTION OF HEADING 9803.0000

A new heading 9803.0000 has been added in the First Schedule which covers "Chartered Flight Services within Sindh or originating from any airfield in Sindh".

## 14. 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. Second Schedule has two parts, Part A covers telecommunication services of heading 98.12 which are subjected to sales tax @ 19.5% whereas Part B covers all other taxable services subjected to sales tax @ 14%. Amendments have been proposed in PART B of the Second Schedule as follows:

14.1. Reduction in the standard rate of sales tax from 14% to 13%: It is proposed to reduce the statutory rate of Sindh sales tax from 14% to 13%.

14.2. Imposition of 13% sales tax on chartered flight services: A new heading 9803.0000 has been added in the First Schedule and the said heading has also been included in the Second Schedule through which 13% sales tax has been levied on "Chartered Flight Services within Sindh or originating from any airfield in Sindh".

14.3. Corrective amendment by inserting heading 98.05 and entry thereof: The services provided by persons authorized to transact business on behalf of others classified under various sub headings of heading 98.05, have been subjected to sales tax but heading was missing. A corrective amendment has been made and the heading has been inserted.

14.4. Widening of scope of tax on certain other types of consultants: Sales tax @ 14% is levied on services of tax consultants classified under heading 9815.9000. It is proposed to widen the scope of imposition of tax to "other consultants including tax consultants, human resource and personal development consultants".

14.5. Imposition of sales tax on new services: It is proposed to bring following new services into sales tax net:

- (i) public relation services of heading 9819.9200.
- (ii) cosmetic and plastic surgery and transplantation of heading 9842.0000.
- (iii) Visa processing services, including advisory or consultancy services for migration or visa application filing services of heading 9843.0000.
- (iv) Debt collection services and other debt recovery services provided or rendered by debt collection agencies or recovery agencies or other persons of heading 9844.0000;
- (v) Supply chain management or distribution or distribution (including delivery) services of heading 9845.0000.

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