

Commentary on Sindh Sales Tax on Services (Amendment) Act, 2023



Foreword



This publication contains brief commentary on the amendments brought into the Sindh Sales Tax on Services Act, 2011 (the SSTSA) through Sindh Sales tax on Services (Amendment) Act, 2023* (*seems to have erroneously been mentioned as 2021 in the notification) which has been notified on March 14, 2023 after having the Sindh Sales tax on Services (Amendment) Bill, 2023 assented by the Governor of Sindh on March 08, 2023.

This publication is aimed at providing general guidance with the objective of keeping our clients and staff abreast of the changes in the aforementioned law only, and Yousuf Adil, Chartered Accountants, is not by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor.

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Karachi
March 28, 2023

Sindh Sales on Services (Amendment) Act, 2023

1. Definitions [Section 2]

a. Active Taxpayer [sub-section (1A)]

The definition of the term **"active taxpayer"** is introduced which means a registered person who does not fall in any of the following categories:

- (a) whose registration is suspended in terms of section 25; and
- (b) who has failed to e-file his returns consecutively for four tax periods.

Through insertion of clause (bbb) into Section 15A(1) of the SSTSA (discussed in the later part of this commentary), restriction on claiming input tax paid on purchases made from a person who is not active taxpayer under the provincial or federal sales tax laws, has also been provided.

Through insertion of section 25B of the SSTSA, the Board is now empowered to prepare and maintain active taxpayers list in such manner as it may deem appropriate and also to make rules to provide for restrictions and limitations to be imposed on any person who ceases to be an active taxpayer or any person who receives or procures any taxable service from a person who has ceased to be an active taxpayer.

b. Software or IT based system development consultant [sub-section (84B)]

Earlier, due to non-availability of the definition of the term 'Software or IT based system development consultant' the scope of services provided by such IT service providers/consultants was being taken to be restricted to the extent of the services related to system

development and consultancy. By virtue of the definition the scope of this service heading is broadened to include various IT related services. The term 'Software or IT based system development consultant' is defined to mean the person providing or rendering the services in relation to software or information technology, including-

- (a) the development of software, network or IT based system and maintenance thereof;
- (b) the study, analysis, design and programming of software or IT based system;
- (c) the adaption, up-gradation, customization, enhancement, integration, implementation and other similar services related to software or IT based system;
- (d) web-hosting and cloud services;
- (e) provision of advice, guidance, consultancy and assistance in matters related to software or IT based system including conducting feasibility studies on implementation of a system;
- (f) provision of specifications for a database design, implementation and management;
- (g) provision of specifications to secure database;
- (h) provision of the right, whether by licensing or otherwise, to use software or IT based system for commercial exploitation including right to reproduce, distribute and sell the software components for the creation of and inclusion in other software or IT based system

products and the renewal of such a right or, license; and

- (i) provision of the right, whether by licensing or otherwise, to use software or IT based system supplied electronically and the renewal of such a right or a license;

The definition also includes services involving provision of right to use software through licensing or otherwise which earlier was understandably covered under the heading of 'Intellectual Property Services'.

c. **Truck Aggregator [sub-section (98CC)]**

A new definition of the term **"truck aggregator"** is introduced which means a person who is an aggregator or operator or intermediary or online market place and canvasses or solicits or facilitates or connects the owners or drivers of trucks or other road transportation cargo vehicles with the business enterprises like manufacturers, producers, importers, exporters, warehouses, distributors, wholesalers, retailers, movers or packers through telephone, cellular phone, internet, web-based services or GPS or GPRS-based services, electronic or digital means, whether or not he charges or collects any fee, fare, commission, brokerage or other charges or consideration for providing such services.

The service of truck aggregators is made taxable at 13% through insertion of entry in the Second Schedule to the SSTA.

d. **Business Support Service**

The existing scope of the term Business Support Service is amended to included therein 'the processing, clearing and settlement services provided or

rendered by any person in relation to securities, commodities and futures contracts'.

2. **Taxable Service [Section 3(1)]**

Earlier, as per section 3(1) of the SSTSA, a service specified in the Second Schedule to the SSTSA was taxable if provided by a registered person from his registered office or place of business in Sindh.

Through substitution of subsection (1) of section 3 of SSTA, the word "registered" is deleted from the phrase "registered person from his registered office".

Now a taxable service provided by any person (whether registered or not) through his office or place of business in Sindh, would be subject to sales tax under the SSTSA. The amendment appears to make the scope of the terms taxable service aligned with the scope provided under the provincial sales tax laws of Punjab and Baluchistan.

To align with the amended section 3(1), similar amendment has been made in section 9(1) of the SSTSA regarding persons liable to pay sales tax whereby in case of services taxable under section 3(1) of the SSTSA, the liability to pay tax shall be on the person who is providing taxable service irrespective of the registration of the person which earlier was of the 'registered person' providing taxable services.

3. **Economic Activity [Section 4(3)(a)]**

Earlier, the services provided by employees to employers were excluded from the scope of economic activity as given under section 4 of the SSTSA.

Through the amendment in clause (a) of subsection 3 of section 4 of the SSTA, a

proviso has been introduced in relation to such exception to the economic activity whereby the activities of an employee for which he earns any fee or commission from the employer, shall be treated as economic activity.

This amendment will not only cause practical difficulties including those related to registration and filing obligation for the employees, issuance of invoice and charging of sales tax, withholding by the employer etc. but would also be taken as lacking legal rational being inconsistent with the provisions of Income Tax Ordinance, 2001, wherein commission or fee paid to employees is treated as 'Salary'.

4. Person liable to pay tax - Joint and Several Liability [Section 9(1)]

Earlier, in case of non-payment sales tax by the registered service recipient (including withholding agent) to the service provider within 180 days of the date of invoice and where the service provider himself has also not paid such sales tax within the prescribed time, the registered service recipient was jointly and severally liable to pay the amount of tax involved. This was in addition to the joint and several liability of the service recipient under section 18 of the SSTSA in the event where the service recipient has knowledge or may suspect that the sales tax would not be paid by the service provider.

Through the Amendment Act, the proviso to section 9(1) through which the recipient of service was jointly or severally held liable in the above manner, has been omitted.

Said amendment will reduce the unnecessary litigation on the part of service recipient where the sales tax on invoices issued by the service provider, is found to be not paid in a supply chain.

5. Input Tax Credit Not Allowed – Insertion of New Clauses [Section 15A(1)]

Through the Amendment Act, following new clauses have been inserted in section 15A(1) of the SSTSA whereby a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to:

- (bb)** the services received, acquired or procured from a person who is liable to be registered under this Act but is not actually registered or who does not hold registration number.

This has been given retrospective effect with effect from July 01, 2016 by giving its validation through amendment in section 84(1) (Validation). The intent behind imposition of such restriction on input tax with its retrospective application appears to close the door of adjustment of input taxes against sales taxes paid on services acquired from unregistered persons which have been held as admissible input taxes by the courts.

Said modification in law giving retrospective effect, is likely to be challenged in the courts as the input taxes claimed by the registered persons on services acquired from unregistered persons would become inadmissible as a result of said amendment.

- (bbb)** the services received, acquired or procured from a person who is not an active taxpayer under this Act or under the Sales Tax Act, 1990 or under any provincial law relating to sales tax;
- (kk)** the supply of goods or services of the Federal Government or any of the Provincial Government, which does not allow the reciprocate input tax adjustment of SRB sales tax, under their respective legislations.

Similar restriction was already available under the provincial sales tax law of Punjab. The input taxes on invoices issued under SSTSA are not admissible under the provincial sales tax law of Punjab owing to restriction on claiming input taxes on invoice with sales tax rate less than 15%. Now, by virtue of this amendment, provincial input taxes of Punjab would also not be adjustable in Sindh.

6. Joint and several liability of persons where tax unpaid [Section 18]

Where a person receiving taxable services, 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, shall be jointly or severally liable to pay sales tax.

Through this amendment, the burden of proof in respect of the fact that the recipient was in the knowledge of or had reasonable grounds to suspect that the tax would go unpaid, is placed on the department.

7. Requirement of Auditor Certificate [Section 26(5)]

Section 26(5) required registered persons whose accounts are subject to audit, for submission of a certificate by the auditors certifying the payment of sales tax due and any deficiency in the sales tax paid by the registered person, in addition to the audited accounts.

It was time and again proposed by the ICAP to either delete the requirement of submitting a special certificate by the auditors or it may be modified to provide for issuance of a certificate in consultation with ICAP based on the rationale that issuance of a certificate in the manner requested under the SSTSA is not within the mandate of auditors'

role as external auditors under the Companies Act, 2017.

Considering such proposal, the requirement of the auditor's certificate has now been omitted.

8. Conduct of electronic audit [Section 28(2A)]

Through the amendment, electronic audit of the taxpayers is introduced whereby the audit officer has been empowered to conduct audit through video link or any other mode specified by the Board.

9. Rationalization of amendments for e-filing [Section 30]

Formerly, the syntax of law implied manual furnishing of sales tax returns as against the actual requirement and procedure for filing return electronically, which has been rationalized. Now, electronic filing of return has been made mandatory.

10. Power to seal business premises [Section 54B]

Through the Amendment Act, a new section 54B has been inserted, whereby an officer of SRB, not below the rank of a Commissioner, has been empowered to seal the business premises for a maximum period of four months, of a person who is either:

- unregistered and does not obtain registration (despite being liable to be registered); or
- not an active taxpayer as per section 2(1A); or
- consistently non-compliant to provisions of the law.

Provided that the above officer shall issue prior notice in writing and, upon

removal of cause of such sealing, shall issue order of de-sealing.

11. Decision in appeal [Section 59]

Formerly, the law specified time line for the Commissioner Appeals to pass the order in appeal within one hundred and twenty (120) days from the date of filing of appeal; which now has been extended to one hundred and eighty (180) days.

12. Appointment of Appellate Tribunal [Section 60(4)]

The Act has revised the criteria for the appointment of Technical Member of Appellate Tribunal SRB which inter alia provides for specification of the revised age bracket for the technical member which shall now be between 50 years to 65 years as against the earlier age bracket of 45 years to 70 years.

13. Service of orders and decisions [Section 75]

Through this amendment, the legal protection has been provided to e-servicing of notices and decisions to all persons (including individuals) sent through email or placing the same in e-folder maintained for e-filing of returns and the persons concerned shall be deemed to have received such notice/order at expiry of 72 hours of such electronic service.

14. Issuance of duplicate sales tax documents [Section 77]

Besides enhancing the fees of issuance of duplicate sales tax documents, (from Rs. 500 per document or Rs. 200 per page to Rs. 1,000 per document or Rs. 250 per page), the Act has also enhanced the nature and scope of the documents of which the duplicate copies may be issued by including therein any

notice or order issued against the registered person requesting the duplicate copy and has also ensured that such documents shall be issued to that registered person only.

15. Delegation of functions & powers by the Board [Section 81A]

Through this amendment, a new section 81A has been inserted, by virtue of which, the Board has been empowered to delegate any of its functions and powers under SSTSA to its Chairman, a Member or an SRB officer subject to such conditions and limitations as it may deem appropriate.

16. Act to override other laws [Section 83A]

A new section 83A has been introduced whereby an overriding effect of the provisions of the SSTSA has been provided against anything contrary or inconsistent with its provisions contained in any other laws for the time being in force.

Schedules

a. Change in description of service heading of Insurance Services (9813.1000)

The description against main tariff heading 9813.1000 relating to insurance services has been amended in both First and Second Schedules to the SSTSA to include within its scope the services provided or rendered by insurance companies in relation to guarantees including an insurance guarantee.

b. Insertion of new service headings

The following service headings have been inserted in First and Second Schedules to the SSTSA with their corresponding rates of Sindh sales tax:

Tariff Heading	Description of service	Rate
9813.1700	Services provided or rendered in relation to guarantees, including an insurance guarantee	13%
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	13%

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